

10-22-2015

Hammer v. City of Sun Valley Clerk's Record v. 9 Dckt. 43079

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TABLE OF CONTENTS

Register of Actions		1
Complaint for Damages and Demand for Jury Trial	6/29/2012	14
Amended Complaint for Damages and Demand for Jury Trial	12/27/2012	100
Defendants' Answer to Plaintiff's Amended Complaint for Damages and Demand for Jury Trial	1/07/2013	187
Memorandum Decision Denying Defendants' Motion for Cost of Previously Dismissed Action Pursuant to IRCP 41(d)	4/24/2013	204
Defendants' Motion to Dismiss	9/17/2013	210
Memorandum in Support of Defendants' Motion to Dismiss	9/17/2013	212
Affidavit of Kirtlan G. Naylor in Support of Motion to Dismiss	9/17/2013	221

INDEX

Affidavit of Kirtlan G. Naylor in Support of Motion to Dismiss	9/17/2013	221
Amended Complaint for Damages and Demand for Jury Trial	12/27/2012	100
Complaint for Damages and Demand for Jury Trial	6/29/2012	14
Defendants' Answer to Plaintiff's Amended Complaint for Damages and Demand for Jury Trial	1/07/2013	187
Defendants' Motion to Dismiss	9/17/2013	210
Memorandum Decision Denying Defendants' Motion for Cost of Previously Dismissed Action Pursuant to IRCP 41(d)	4/24/2013	204
Memorandum in Support of Defendants' Motion to Dismiss	9/17/2013	212
Register of Actions		1

Date: 5/27/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 08:23 AM

ROA Report

Page 1 of 13

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribí, Dewayne L Briscoe

Other Claims

Date		Judge
6/29/2012	New Case Filed - Other Claims	Robert J. Elgee
	Plaintiff: Hammer, Sharon R Appearance Eric B. Swartz	Robert J. Elgee
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Jones & Swartz Receipt number: 0005184 Dated: 6/29/2012 Amount: \$88.00 (Check) For: Hammer, Sharon R (plaintiff)	Robert J. Elgee
	Complaint For Damages and Demand for Jury Trial Filed	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to City of Sun Valley, Idaho; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Nils A Ribí; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Dewayne L Briscoe; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Adam King; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Robert Youngman; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Kelly Rae Ek; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Michelle Frostenson; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Franz Suhadolnik; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Subpoena: Document Service Issued: on 6/29/2012 to Michelle Griffith; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Joan Robertson Lamb; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Wayne Willich; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
7/2/2012	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Naylor & Hales, PC Receipt number: 0005260 Dated: 7/2/2012 Amount: \$35.00 (Credit card)	Robert J. Elgee
	Miscellaneous Payment: Technology Cost - CC Paid by: Naylor & Hales, PC Receipt number: 0005260 Dated: 7/2/2012 Amount: \$3.00 (Credit card)	Robert J. Elgee
7/3/2012	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Naylor & Hales PC Receipt number: 0005289 Dated: 7/3/2012 Amount: \$51.00 (Credit card)	Robert J. Elgee
	Miscellaneous Payment: Technology Cost - CC Paid by: Naylor & Hales PC Receipt number: 0005289 Dated: 7/3/2012 Amount: \$3.00 (Credit card)	Robert J. Elgee
7/10/2012	Order of disqualification	Robert J. Elgee
7/12/2012	Order of assignment	Robert J. Elgee

Other Claims

Date		Judge
7/12/2012	Change Assigned Judge	Jonathan P. Brody
11/21/2012	Notice Of Service of discovery requests	Jonathan P. Brody
11/29/2012	Notice Of Service of Amended discovery requests	Jonathan P. Brody
12/7/2012	Notice Of Service Of Second Amended Discovery Requests	Jonathan P. Brody
12/20/2012	Acceptance Of Service	Jonathan P. Brody
12/27/2012	Amended Complaint for Damages and Demand for Jury Trial	Jonathan P. Brody
1/2/2013	Notice Of General Appearance for Defendants	Jonathan P. Brody
	Defendant: City of Sun Valley, Idaho Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Defendant: Ribí, Nils A Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Defendant: Briscoe, Dewayne L Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Filing: i1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Naylor, Kirtlan G. (attorney for Briscoe, Dewayne L) Receipt number: 0000033 Dated: 1/2/2013 Amount: \$66.00 (Check) For: Briscoe, Dewayne L (defendant), City of Sun Valley, Idaho (defendant) and Ribí, Nils A (defendant)	Jonathan P. Brody
1/7/2013	Defendant's Answer to Plaintiff's Amended Complaint for Damages and Demand for Jury Trial	Jonathan P. Brody
2/8/2013	Defendants' Motion For Costs Of Previously Dismissed Action Pursuant to I.R.C.P 41(d)	Jonathan P. Brody
	Affidavit of Jacob H. Naylor in Support of Defendant's Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d)	Jonathan P. Brody
2/26/2013	Notice Of Hearing Re: Defendant's Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Hearing Scheduled (Motion 03/19/2013 01:30 PM) Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Defendants' Motion to Appear Telephonically for Hearing on Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
3/12/2013	Order granting Defendants' Motion to Appear Telephonically for Hearing on Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Plaintiff's Motion for permission to appear telephonically	Jonathan P. Brody
	Plaintiff's Response in Opposition to Defendants' Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Support of Plaintiff's Response in Opposition to Defendants' Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
3/13/2013	Order granting Plaintiff's motion for permission to appear telephonically	Jonathan P. Brody
3/15/2013	Reply Brief in Support of Defendants' Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d)	Jonathan P. Brody
3/18/2013	Continued (Motion 03/19/2013 09:00 AM) Telephonic in Minidoka Co. Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	Jonathan P. Brody

Other Claims

Date		Judge
3/19/2013	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: brennan rego Receipt number: 0002199 Dated: 3/19/2013 Amount: \$84.00 (Credit card)	Jonathan P. Brody
	Miscellaneous Payment: Technology Cost - CC Paid by: brennan rego Receipt number: 0002199 Dated: 3/19/2013 Amount: \$3.00 (Credit card)	Jonathan P. Brody
	Hearing result for Status scheduled on 03/19/2013 09:00 AM: Court Minutes Telephonic in Minidoka Co.	Jonathan P. Brody
	Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	
	Hearing result for Status scheduled on 03/19/2013 09:00 AM: District Court Hearing Held Court Reporter:NONE Estimated Number of Transcript Pages for this hearing: Telephonic in Minidoka Co.	Jonathan P. Brody
	Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	
	Hearing Vacated Motion scheduled on 03/19/2013 01:30 PM	Jonathan P. Brody
4/2/2013	Amended Notice Of Hearing Re: Defendants' Motin for Costs of Previously Dismissed Action	Jonathan P. Brody
	Hearing Scheduled (Motion 04/16/2013 01:30 PM) Motion for costs of Previously Dismissed Action	Jonathan P. Brody
4/10/2013	Notice Of Service Of Discovery Requests to Defendant City of Sun Valley	Jonathan P. Brody
4/15/2013	Request to obtain approval to video record, broadcast or photograph a court proceeding & Order	Jonathan P. Brody
4/16/2013	Court Minutes Hearing type: Motion Hearing date: 4/16/2013 Time: 2:02 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: MINI Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/16/2013 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Motion for costs of Previously Dismissed Action less 100	Jonathan P. Brody
	Case Taken Under Advisement	Jonathan P. Brody
4/24/2013	Memorandum Decision Denying Defendants' motion for costs of previously dismissed action pursuant to IRCP 41(d)	Jonathan P. Brody
	no longer u/a	Jonathan P. Brody
4/26/2013	Notice Of Service of Defendants City of Sun Valley's First Set of Interrogatories, Requests for Produciton of Documents, and Requests for Admission to Plaintiff	Jonathan P. Brody

Other Claims

Date		Judge
5/17/2013	Notice Of Service Re: Defendant City of Sun Valley's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents	Jonathan P. Brody
5/29/2013	Acceptance Of Service of Subpoena	Jonathan P. Brody
6/11/2013	Notice of Compliance	Jonathan P. Brody
6/19/2013	Notice of Compliance	Jonathan P. Brody
6/20/2013	Notice of compliance	Jonathan P. Brody
6/27/2013	Stipulation for Protective Order	Jonathan P. Brody
7/3/2013	Order Re: Stipulation for Protective Order	Jonathan P. Brody
9/17/2013	Hearing Scheduled (Motion to Dismiss 10/01/2013 02:00 PM)	Jonathan P. Brody
	Motion to Dismiss	Jonathan P. Brody
	Memorandum in Support of Defendants' Motion to Dismiss	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in Support of Motion to Dismiss	Jonathan P. Brody
9/24/2013	Errata to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	Jonathan P. Brody
	Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	Jonathan P. Brody
9/27/2013	Reply Memorandum in Support of Defendants' Motion to Dismiss	Jonathan P. Brody
10/1/2013	Court Minutes	Jonathan P. Brody
	Hearing type: Motion to Dismiss	
	Hearing date: 10/1/2013	
	Time: 2:45 pm	
	Courtroom: District Courtroom-judicial Bldg	
	Court reporter: Maureen Newton	
	Minutes Clerk: ANDREA	
	Tape Number:	
	Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor	
	Party: Dewayne Briscoe, Attorney: Kirtlan Naylor	
	Party: Nils Ribí, Attorney: Kirtlan Naylor	
	Party: Sharon Hammer, Attorney: Eric Swartz	
	Hearing result for Motion to Dismiss scheduled on 10/01/2013 02:00 PM:	Jonathan P. Brody
	District Court Hearing Held	
	Court Reporter: Maureen Newton	
	Estimated Number of Transcript Pages for this hearing: 1-100 pages	
	Hearing result for Motion to Dismiss scheduled on 10/01/2013 02:00 PM:	Jonathan P. Brody
	Case Taken Under Advisement	
11/4/2013	Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena	Jonathan P. Brody
	Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Compel	Jonathan P. Brody
	Affidavit of Attorney James R. Donoval Related to Motion to Compel	Jonathan P. Brody

Other Claims

Date		Judge
11/4/2013	Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
11/6/2013	Hearing Scheduled (Motion 12/03/2013 01:30 PM) Motion to Enforce Subpoena	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Continued (Motion 12/17/2013 01:30 PM) Motion to Enforce Subpoena	Jonathan P. Brody
	Amended Notice Of Hearing	Jonathan P. Brody
11/8/2013	Notice Of Taking Deposition of Franz Suhadolnik	Jonathan P. Brody
	Stipulated Joint Discovery Management Plan	Jonathan P. Brody
	Notice of Taking Deposition of Michelle Griffith	Jonathan P. Brody
	Notice Of Taking Deposition of Robert Youngman	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Michelle Griffith	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Franz Suhadolnik	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Robert Youngman	Jonathan P. Brody
11/22/2013	Order Re: Stipulated Joint Discovery Management Plan	Jonathan P. Brody
11/26/2013	Memorandum Decision Granting Defendants Motion to Dismiss	Jonathan P. Brody
11/29/2013	Defendants' Motion to Remove Defendants Ribí and Briscoe from the Case Caption	Jonathan P. Brody
12/10/2013	Defendant's Opposition To Plaintiff's Motion to Enforce Subpoena	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	Jonathan P. Brody
	Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	Jonathan P. Brody
12/11/2013	Hearing Scheduled (Motion for Reconsideration 01/07/2014 01:30 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Continued (Motion for Reconsideration 01/21/2014 02:00 PM)	Jonathan P. Brody
	Amended Notice Of Hearing	Jonathan P. Brody
12/13/2013	Reply in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Supplemental Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion to Compel	Jonathan P. Brody
12/16/2013	Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody

Other Claims

Date		Judge
12/17/2013	Court Minutes Hearing type: Motion Hearing date: 12/17/2013 Time: 2:03 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion scheduled on 12/17/2013 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Motion to Enforce Subpoena less 100	Jonathan P. Brody
12/18/2013	Order Granting Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody
1/6/2014	Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	Jonathan P. Brody
1/9/2014	Transcript Filed (12/17/13 Hearing)	Jonathan P. Brody
1/14/2014	Defendants' Opposition To Plaintiff's Motion for Reconsideration	Jonathan P. Brody
1/16/2014	Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
	Order Granting Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
1/17/2014	Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel	Jonathan P. Brody
1/21/2014	Court Minutes Hearing type: Motion for Reconsideration Hearing date: 1/21/2014 Time: 2:45 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Dewayne Briscoe, Attorney: Kirtlan Naylor Party: Nils Ribí, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion for Reconsideration scheduled on 01/21/2014 02:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: telephonic less 100	Jonathan P. Brody
	Notice of Compliance	Jonathan P. Brody
1/22/2014	Hearing Scheduled (Scheduling Conference 02/04/2014 01:30 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
1/28/2014	Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
1/29/2014	Order Granting Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody

Other Claims

Date		Judge
1/29/2014	Order Granting Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
1/31/2014	Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena, Oral Argument Requested	Jonathan P. Brody
	Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Reconsider Denial of Motion to Compel	Jonathan P. Brody
2/4/2014	Court Minutes Hearing type: Scheduling Conference Hearing date: 2/4/2014 Time: 1:45 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz	Jonathan P. Brody
	Hearing result for Scheduling Conference scheduled on 02/04/2014 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: telephonic less 100	Jonathan P. Brody
2/5/2014	Hearing Scheduled (Status 02/03/2015 01:30 PM)	Jonathan P. Brody
	Hearing Scheduled (Jury Trial 04/08/2015 09:00 AM) 8 days	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Motion for IRCP 37(e) discovery sanctions against Plaintiff	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in support of discovery sanctions (Under Seal)	Jonathan P. Brody
	Document sealed	
2/14/2014	Memorandum in Support of Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
2/18/2014	Memorandum Decision Denying Motion to Reconsider	Jonathan P. Brody
	Memorandum Decision Denying Motion to Amend	Jonathan P. Brody
2/21/2014	Briefing Schedule for Defendant's Motion for Sanctions	Jonathan P. Brody
2/26/2014	Hearing Scheduled (Motion 04/14/2014 02:30 PM) for Reconsideration	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Patricia Ball and to Compel Production of Documents	Jonathan P. Brody
	Hearing Scheduled (Motion 04/14/2014 03:00 PM) for Petition to Appeal-Plaintiff to appear telephonically	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody

Other Claims

Date		Judge
2/26/2014	Hearing Scheduled (Motion 04/14/2014 03:00 PM) for Permission to Appeal	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
3/10/2014	Plaintiff's Opposition To Defendant's Motion for Sanctions	Jonathan P. Brody
	Notice of Compliance with Briefing Schedule for Defendant's Motion for I.R.C.P. 37(e) Discovery Sanctions Against Plaintiff	Jonathan P. Brody
	Affidavit of James R. Donoval on Opposition to Defendant's Motion for Sanctions	Jonathan P. Brody
3/21/2014	Reply Memorandum in Support of Motion for I.R.C.P. 37(e) Discovery Sanctions Against Plaintiff	Jonathan P. Brody
4/7/2014	Defendants' Objection to Motion for Permissive Appeal	Jonathan P. Brody
	Defendant's Opposition To Plaintiff's Motion for Reconsideration to Deny Plaintiff's Motion to Compel	Jonathan P. Brody
4/11/2014	Stipulation for Scheduling and Planning Dates	Jonathan P. Brody
4/14/2014	Hearing result for Motion scheduled on 04/14/2014 03:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Permission to Appeal less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/14/2014 03:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Petition to Appeal-Plaintiff to appear telephonically less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/14/2014 02:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Reconsideration-Telephonic less 100	Jonathan P. Brody
	Case Taken Under Advisement	Jonathan P. Brody
4/17/2014	Order on motion for discovery sanctions	Jonathan P. Brody
5/8/2014	Order Denying Permissive Appeal	Jonathan P. Brody
	No Longer UA	Jonathan P. Brody
	Scheduling Order, Notice Of Trial Setting And Initial Pretrial Order	Jonathan P. Brody
5/16/2014	Memorandum Decision Denying Motion to Reconsider	Jonathan P. Brody
6/3/2014	Amended Scheduling Order, Notice Of Trial Setting And Initial Pretrial Order	Jonathan P. Brody
9/10/2014	Notice of Compliance	Jonathan P. Brody
9/30/2014	Notice Of Taking Deposition Upon Oral Examination of Karen Ginnett	Jonathan P. Brody
	Notice Of Taking Deposition Upon Oral Examination of Dr. Mary Barros-Bailey	Jonathan P. Brody
11/18/2014	Declaration of Susan Robertson	Jonathan P. Brody

Other Claims

Date		Judge
11/18/2014	Memorandum in Support of Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Notice Of Hearing Re: Defendant's Motion for Summary Judgment	Jonathan P. Brody
	Hearing Scheduled (Motion for Summary Judgment 12/16/2014 03:00 PM)	Jonathan P. Brody
	Declaration of Kirtlan G. Naylor	Jonathan P. Brody
	Declaration of Kirtlan G. Naylor- Exhibit F of Exhibit J is Filed under Seal	Jonathan P. Brody
	Document sealed	
	Hearing Scheduled (Motion for Summary Judgment 12/16/2014 02:00 PM) Plaintiff	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
11/19/2014	Continued (Motion for Summary Judgment 12/16/2014 02:00 PM) Defendant	Jonathan P. Brody
	Amended Notice Of Hearing Re: Defendant's Motion for Summary Judgment	Jonathan P. Brody
11/21/2014	Corrected Memorandum in support of Sun Valley's motion for summary judgment	Jonathan P. Brody
12/1/2014	Defendant City of Sun Valley's List of Lay Witnesses for Trial	Jonathan P. Brody
12/2/2014	Sun Valley's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Plaintiff's Response to Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Counsel in Support of Plaintiff's Response to Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
12/9/2014	Reply in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Sun Valley's Reply Memorandum in Support of Motion for Summary Judgment	Jonathan P. Brody

Other Claims

Date		Judge
1/30/2015	Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Reconsideration	Jonathan P. Brody
	Affidavit of James R. Donoval in Support of Plaintiff's Motion for Reconsideration	Jonathan P. Brody
	Facts in Support of Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
2/2/2015	Notice Of Filing	Jonathan P. Brody
2/4/2015	Notice Of Hearing	Jonathan P. Brody
	Hearing Scheduled (Motion 03/17/2015 01:30 AM) Motion for reconsideration of entry of Summary Judgment etc.	Jonathan P. Brody
	STATUS CHANGED: Closed pending clerk action	Jonathan P. Brody
2/6/2015	Motion for expedited ruling on motion to stay proceedings on petition for fees	Jonathan P. Brody
	Motion to stay proceedings on petition for fees pending reconsideration of entry of summary judgment and rulings on motion to withdraw	Jonathan P. Brody
	Memorandum in support of motion to stay proceedings on petition for fees pending reconsideration of entry of summary judgment and rulings on motion to withdraw	Jonathan P. Brody
	Affidavit of James R. Donoval in support of plaintiff's motion to stay petition for fees	Jonathan P. Brody
	Notice of filing	Jonathan P. Brody
2/9/2015	Defendant's Objection to Plaintiff's Motion to Stay and Motion to Expedite	Jonathan P. Brody
2/10/2015	Memorandum Decision on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	Jonathan P. Brody
	Order on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	Jonathan P. Brody
	Reply in Support of Motion to Stay Proceedings on Petition for Fees Pending Reconsideration of Entry of Summary Judgment and Rulings on Motion to Withdraw	Jonathan P. Brody
	Court Minutes	Jonathan P. Brody
	District Court Hearing Held (Status 2/10/2015 at 1:30pm in Minidoka County)	Jonathan P. Brody
	Court Reporter:Maureen Newton	
	Estimated Number of Transcript Pages for this hearing: less 100	
	Scheduling Order	Jonathan P. Brody
2/11/2015	Hearing Scheduled (Motion 03/03/2015 03:30 PM) Call into Conf. Call	Jonathan P. Brody
2/25/2015	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Donoval, James R (attorney for Hammer, Sharon R) Receipt number: 0001117 Dated: 2/25/2015 Amount: \$129.00 (Check) For: Hammer, Sharon R (plaintiff)	Jonathan P. Brody
	Bond Posted - Cash (Receipt 1118 Dated 2/25/2015 for 100.00)	Jonathan P. Brody
	Notice Of Appeal	Jonathan P. Brody

Other Claims

Date		Judge
3/2/2015	Plaintiff's Objection to Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Objection to Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
3/3/2015	Court Minutes Hearing type: Motion to Withdraw Hearing date: 3/3/2015 Time: 2:24 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion to Withdraw scheduled on 03/03/2015 03:30 PM: Jonathan P. Brody District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Call into Conf. Call less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 03/17/2015 01:30 AM: Hearing Vacated Motion for reconsideration of entry of Summary Judgment etc.	Jonathan P. Brody
3/4/2015	Order Modifying Automatic Stay	Jonathan P. Brody
	Order Permitting Jones & Swartz PLLC to Withdraw as Attorneys for Plaintiff	Jonathan P. Brody
	Appealed To The Supreme Court	Jonathan P. Brody
	STATUS CHANGED: Inactive	Jonathan P. Brody
	Hearing Scheduled (Status 04/07/2015 04:00 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Notice Of Service of Order Permitting Jones & Swartz PLLC to Withdraw as Attorneys for Plaintiff	Jonathan P. Brody
3/11/2015	Defendant-Respondents' Request for Additional Transcript and Record	Jonathan P. Brody
3/16/2015	Miscellaneous Payment: Copies Of Transcript For Appeals Per Page Paid by: JDIDAHOLAW, PLLC Receipt number: 0001534 Dated: 3/16/2015 Amount: \$2,557.50 (Check)	Jonathan P. Brody
3/23/2015	Plaintiff: Hammer, Sharon R Appearance Wyatt Johnson	Jonathan P. Brody
4/6/2015	Continued (Status 04/07/2015 02:30 PM)	Jonathan P. Brody
4/7/2015	Motion to Supplement Objection to and Motion to Disallow Defendants Fees and Costs	Jonathan P. Brody
	Memorandum in Support of Motion to Supplement Objection and Motion to Disallow Fees and Costs	Jonathan P. Brody
	Supplemental Memorandum in Support of Plaintiff's Objection to, and Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Opposition to Sun Valley's Memorandum of Costs and Fees	Jonathan P. Brody

Date: 5/27/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 08:23 AM

ROA Report

Page 13 of 13

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

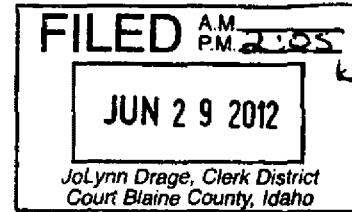
Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribí, Dewayne L Briscoe

Other Claims

Date		Judge
4/7/2015	Court Minutes Hearing type: Status Hearing date: 4/7/2015 Time: 3:40 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtian Naylor Party: Sharon Hammer, Attorney: James Donoval Hearing result for Status scheduled on 04/07/2015 02:30 PM: District Court Hearing Held Court Reporter: Susan Israel Estimated Number of Transcript Pages for this hearing: less 100	Jonathan P. Brody
4/9/2015	Hearing Scheduled (Motion 06/02/2015 01:30 PM)	Jonathan P. Brody
4/15/2015	Notice of Hearing and Scheduling Order on Motions	Jonathan P. Brody
5/19/2015	Defendants' Notice of Non-Opposition Sun Valley's Objection to Plaintiff's Motion for Reconsideration of Summary Judgment	Jonathan P. Brody
	Defendants' Response to Plaintiff's Motion to Disallow Costs and Fees	Jonathan P. Brody
5/26/2015	Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
	Affidavit of James R. Donoval in Response to Allegations of Conflict of Interest with Attorney Eric Swartz(Under Seal)	Jonathan P. Brody
	Document sealed	
	Notice Of Filing	Jonathan P. Brody
	Reply Memorandum in Support of Motion to Disallow Costs and Fees	Jonathan P. Brody

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Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY;
NILS RIBI, in his individual and official capacity;
DeWAYNE BRISCOE, in his individual and official
capacity; ADAM KING, in his official capacity;
ROBERT YOUNGMAN, in his official capacity;
KELLY EK, in her official capacity;
MICHELLE FROSTENSON, in her official capacity;
FRANZ SUHADOLNIK, in his official capacity;
MICHELLE GRIFFITH, in her official capacity;
JOAN LAMB, in her official capacity; and
WAYNE WILLICH, in his official capacity,

Defendants.

Case No. CV-2012-479

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY
TRIAL**
[I.C. § 6-2101, *et seq.*]

ROBERT J. ELGEE

COMES NOW the Plaintiff, Sharon R. Hammer, by and through her counsel of record,
Jones & Swartz PLLC, and alleges and states the following:

PARTIES, JURISDICTION, AND VENUE

1. At all times relevant hereto, Plaintiff Sharon R. Hammer ("Ms. Hammer") was residing in the county of Blaine, state of Idaho. Ms. Hammer served as the City Administrator for the City of Sun Valley from June 1, 2008 until January 19, 2012. Ms. Hammer also worked as a paid-on-call firefighter and EMT for the City of Sun Valley during this time.

2. Defendant City of Sun Valley ("City") is a municipal corporation and political subdivision of the State of Idaho. As a body politic and corporate, the City has the power to sue and be sued. Additionally, the City may be held to compensate for actions that implement, execute or violate a policy statement, resolution, ordinance, regulation, or decision officially adopted and promulgated by its officials, each of whom may be acting in good faith.

3. Defendant DeWayne Briscoe is the current elected Mayor of the City, having been sworn into office on January 3, 2012. Prior to becoming Mayor, Defendant Briscoe was elected Council President for the Sun Valley City Council in or about January 2010, and acted in that position until January 3, 2012.

4. At all times relevant hereto, Defendant Nils Ribí acted as an elected Council Member for the Sun Valley City Council. Defendant Ribí's first term began in or about January 2006 through January 2010. Defendant Ribí's current term began on or about January 5, 2010, and will end in January 2014.

5. Defendant Robert Youngman is the current elected Council President for the Sun Valley City Council, having been sworn into office on January 3, 2012. Defendant Youngman was first sworn in as a City Council Member in or about January 2010.

6. At all times relevant hereto, Defendant Adam King acted as the City Attorney for the City.

7. At all times relevant hereto, Defendant Kelly Ek was employed by the City as the Sun Valley City Clerk.

8. At all times relevant hereto, Defendant Michelle Frostenson was employed by the City as the Sun Valley Finance Director/City Treasurer.

9. Defendant Franz Suhadolnik is currently an elected Council Member for the Sun Valley City Council. Defendant Suhadolnik's current term began on January 3, 2012, and will end in January 2016. This current term is his first term as a City Council Member.

10. Defendant Michelle Griffith is currently an elected Council Member for the Sun Valley City Council. Defendant Griffith's term began on January 3, 2012, and will end in January 2016. This current term is her first term as a City Council Member.

11. At all times relevant hereto, but ending on January 3, 2012, Defendant Joan Lamb acted as an elected Council Member for the Sun Valley City Council. Defendant Lamb's former term ended on or about January 3, 2012.

12. At all times relevant hereto, but ending on January 3, 2012, Defendant Wayne Willich acted as the elected Mayor for the City. Defendant Willich's former term ended on or about January 3, 2012.

13. This Court has original jurisdiction over this controversy pursuant to Idaho Code § 6-2105(3).

14. Venue is proper in this Court pursuant to Idaho Code § 5-402.

**FACTUAL ALLEGATIONS OF APPLICABLE CITY POLICIES
AND ROLES OF CITY REPRESENTATIVES**

15. As a result of the City's national search of candidates, Ms. Hammer was appointed to the position of City Administrator by Defendant Willich following the unanimous

vote of Defendants Briscoe, Lamb, and Ribi, and non-party, former Council Member David Chase.

16. The terms and conditions of Ms. Hammer's employment with the City were set forth in a written employment agreement. Pursuant to that employment agreement, Ms. Hammer's duties as City Administrator commenced on June 1, 2008.

17. The terms and conditions of Ms. Hammer's employment agreement were, from time to time, amended and/or extended by agreement between her and the sitting Mayor, as allowed for within the original employment agreement.

18. On or about January 16, 1997, the City did adopt its Personnel Policies and Procedures Manual ("Manual"), which has been amended from time to time. Attached as Exhibit 1, and incorporated herein by reference pursuant to Idaho Rule of Civil Procedure 10(c), is a true and correct copy of the Manual governing the City and its representatives at all times relevant hereto.

19. Upon information and belief, the City has adopted other rules and regulations regarding ethical rules and professional responsibilities of City Council Members. Such other policies and rules may also have been violated by certain Defendants named herein.

20. Pursuant to the Manual, Ms. Hammer, as City Administrator, was responsible to and directed by the sitting Mayor. From June 1, 2008 until January 3, 2012, Ms. Hammer was directly supervised by Defendant Willich. From January 3, 2012 until January 19, 2012, Ms. Hammer was directly supervised by Defendant Briscoe.

21. Pursuant to the Manual, the City Attorney, Defendant King, was also directly supervised and evaluated only by the Mayor.

22. As City Attorney, Defendant King was the legal advisor of the City. He was

further obligated to provide professional legal advice and services to the City Administrator and Mayor on matters related to the City's policies and procedures. At all times relevant hereto, the City Administrator was Ms. Hammer. At all times relevant hereto, the Mayor was either Defendant Wayne Willich or Defendant DeWayne Briscoe.

23. Pursuant to the Manual, all other City employees, including the City Clerk and City Treasurer, were directly supervised and evaluated by the City Administrator, Ms. Hammer.

24. The primary roles of City Council Members are to approve the appointment and/or discharge of certain City employees, and enact or modify ordinances and policies and procedures for the City.

25. City Council Members have no authorized role in the day-to-day administration or operations of the City.

26. City Council Members have no authority to direct another City employee in the administration of that employee's duties. No City employee is directly supervised by any City Council Member. Pursuant to the Manual, no City employee's job performance is evaluated by any City Council Member. Pursuant to the Manual, no City employee is allowed to provide confidential records to any Council Member without approval from either the Mayor or the City Administrator. City Council Members have no authority to seek or take disciplinary action against any City employee.

27. Within the Manual, the City expressly adopted a harassment policy that prohibited "harassment in any form, including verbal, physical and visual harassment" either "by or against any of its Employees." (Ex. 1, § 7.5.)

28. When an employee believes that he or she has been harassed "by a co-worker, Supervisor, any City official, or individual outside of the City organization," the anti-harassment

guidelines of the Manual instruct the employee to “immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.” (Ex. 1, § 7.5, Guidelines A.) Further, if the complaint is against “a member of the City Council, the Employee should report the complaint to the Mayor.” (Ex. 1, § 7.5, Guidelines B.)

29. The Manual further prohibits retaliation against a person “for filing a harassment charge or making a harassment complaint.” (Ex. 1, § 7.5, Guidelines G.)

**FACTUAL ALLEGATIONS SUMMARIZING VIOLATIONS OF THE
IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT**

30. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

31. Throughout her employment by the City, Ms. Hammer was repeatedly and continuously harassed, physically and emotionally intimidated, and verbally abused by the conduct of Defendant Ribí.

32. Ms. Hammer repeatedly reported the incidents of harassment, intimidation and abuse to Defendant Willich, Defendant King, or City Police Chief Cam Daggett.

33. In retaliation for Ms. Hammer’s complaints against him, Defendant Ribí sought confidential documents from other City employees, including at least Defendants Ek and Frostenson, in order to create the appearance of misconduct by Ms. Hammer.

34. Defendants Ek and Frostenson distributed confidential documents regarding or relating to Ms. Hammer to, at least, Defendant Ribí and Defendant King.

35. In response to pressures from and allegations of misconduct alleged by Defendants Ribí, Youngman, Briscoe, and King, which were allegedly supported by confidential employment documents supplied by Defendants Ek and Frostenson, Defendant Willich, along

with Defendants Ribí, Youngman, Briscoe, and Lamb, placed Ms. Hammer on administrative leave pending an independent special investigation.

36. Following the conclusion of the City's special investigation in late December 2011, Defendant Willich found Ms. Hammer to have done no wrong, and requested that she return to work immediately. Pursuant to the Manual, Defendant Willich's decision was final and binding.

37. Following the swearing in of Defendant Briscoe as City Mayor in January 2012, Defendant Briscoe re-placed Ms. Hammer on administrative leave. A few weeks later, Defendant Briscoe, along with Defendants Ribí, Youngman, Suhadolnik, and Griffith, terminated Ms. Hammer from her position as City Administrator.

38. Upon information and belief, Ms. Hammer was twice put on administrative leave and then fired in response to ongoing retaliation and pressures from Defendants Ribí, Briscoe, Youngman and King.

39. Ms. Hammer suffered adverse actions when she was placed on administrative leave and then fired.

40. Ms. Hammer suffered emotional distress and/or economic losses when she was placed on administrative leave and then fired.

**FACTUAL ALLEGATIONS OF VIOLATIONS OF THE
IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT, I.C. §§ 6-2101, et seq.**

41. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

42. In or about the fall of 2008 through spring of 2009, Ms. Hammer worked with Defendant Willich in the development and/or amendment of certain written policies pertaining to

City finances and City Council operations, including but not limited to the budget policy, fund balance policy, revenue and expenditure policy, investment policy, debt management policy, Powers and Authorities of the Mayor and City Council, and a Mayor and Council Ethics Policy. Defendant Willich presented such policies to the Sun Valley City Council for review and adoption.

43. During the development of such policies, Ms. Hammer was repeatedly contacted by Defendant Ribí, both telephonically and in person, regarding specific language he demanded be included in or deleted from the draft policies. Ms. Hammer told Defendant Ribí that those discussions were to be held with the entire City Council at a public City Council meeting, and that any changes Defendant Ribí was seeking needed to be approved by vote of the entire City Council.

44. During each such confrontation, Defendant Ribí became hostile toward Ms. Hammer. In response to Defendant Ribí's aggression, Ms. Hammer directed Defendant Ribí to discuss the issues with Defendant Willich.

45. During several of these confrontations, Defendant Ribí would stand in the doorway of Ms. Hammer's office, thereby prohibiting her ability to leave, and verbally chastise her for not doing exactly what he wanted her to do.

46. After each such confrontation, Ms. Hammer discussed Defendant Ribí's improper hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribí. Upon information and belief, Defendant Willich did discuss the same with Defendant Ribí.

47. On or about April 16, 2009, a Sun Valley City Council meeting was held. During said meeting, Defendant Willich publicly stated words to the effect that City Council Members

have no authority to direct any City employee, including Ms. Hammer, to do anything. Defendant Willich further stated that City Council Members should instead direct all inquiries and requests to Defendant Willich himself.

48. In or about early 2009, Defendant Ribí requested, and was provided, a Sun Valley Fire Department ("Fire Department") pager from Sun Valley Fire Chief Jeff Carnes.

49. Normally, only members of the Fire Department are issued pagers once they have successfully completed extensive formal emergency response trainings and have officially become a member of the Fire Department. Defendant Ribí had not completed any such requisite trainings. Defendant Ribí has never been a member of the Fire Department.

50. After he was provided a Fire Department pager, Defendant Ribí routinely appeared at the scene of emergency calls. In or about April of 2009, Defendant Ribí arrived at a call for a vehicle crash. Ms. Hammer, who was a member of the Fire Department, was on one of the response teams. Defendant Ribí began taking photographs of the scene.

51. Subsequently, Ms. Hammer raised concerns with Sun Valley Police Chief Cam Daggett, Sun Valley Fire Chief Jeff Carnes, and Defendant Willich about the potential liability to the City from Defendant Ribí's presence at emergency calls and his taking of photographs of such events. At the next Local Emergency Planning Committee meeting, Ms. Hammer attempted to explain to Defendant Ribí the potential liability he could create for the City. Defendant Ribí became very angry at Ms. Hammer, raised his hands in the air and began shaking them, and said: "No, no, no, you don't understand!" He told Ms. Hammer that he was taking photographs of the events for his own personal use.

52. Ms. Hammer explained to Defendant Ribí that if the photographs had no official City function, than he was just like any other non-City related individual and there was no good

reason for him to be allowed at emergency scenes and that he should be barred from taking such photographs. Defendant Ribi became even more angry and red in the face, and raised his voice, shouting even louder at Ms. Hammer.

53. Eventually, Fire Chief Carnes told Defendant Ribi that the pager needed to be repaired, and the pager was returned. Over the next few weeks, Defendant Ribi caused enough commotion over not having a Fire Department pager that it was returned to him. Upon information and belief, Defendant Ribi is still in possession of said pager.

54. On or about May 14, 2009, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was repeatedly contacted by Defendant Ribi, both telephonically and in person, regarding what the City Council Priorities should be. He contacted her about the issue before those priorities were presented for discussion and approval the City Council.

55. During those communications, Defendant Ribi demanded that Ms. Hammer make changes to the language of the proposed City Council Priorities. During each confrontation, Ms. Hammer told Defendant Ribi that his requests were to be discussed with the entire City Council at a public City Council meeting and that any changes Defendant Ribi was seeking needed to be agreed upon by the entire City Council. Defendant Ribi became angry and hostile toward Ms. Hammer. In response to Defendant Ribi's aggressions, Ms. Hammer directed him to discuss the issues with Defendant Willich.

56. Ms. Hammer thereafter discussed Defendant Ribi's hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribi. Upon information and belief, Defendant Willich did do so.

57. On or about July 9, 2009, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was repeatedly contacted by Defendant Ribi, both telephonically and

in person, regarding the Amtrak Service Resolution that was to be discussed by the City Council at the July 9th meeting. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to the language of the proposed Amtrak Service Resolution.

58. During each confrontation, Ms. Hammer told Defendant Ribí that his requests had to be discussed with the entire City Council at a public City Council meeting and that any changes Defendant Ribí was seeking needed to be agreed upon by the entire City Council. Defendant Ribí became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribí to discuss the issues with Defendant Willich.

59. Ms. Hammer thereafter discussed Defendant Ribí's angry and aggressive conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the angry and aggressive conduct with Defendant Ribí. Upon information and belief, Defendant Willich did discuss the same with Defendant Ribí.

60. On or about January 21, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribí on several occasions, both telephonically and in person, regarding the language that he demanded be included in the Sun Valley City Council Powers and Authorities and Code of Conduct being discussed by the City Council.

61. During each such confrontation, Ms. Hammer told Defendant Ribí that those discussions were to be held with the entire City Council at a public City Council meeting and that any changes Defendant Ribí was seeking needed to be made by the entire City Council. Defendant Ribí became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribí to discuss the issues with Defendant Willich.

62. Ms. Hammer thereafter discussed Defendant Ribí's angry and aggressive conduct

toward her with Defendant Willich. At this time, Ms. Hammer specifically discussed with Defendant Willich that Defendant Ribí's anger and hostility toward her was becoming a pattern of conduct. Ms. Hammer again described her repeated experiences of perceived verbal and visual abuse. Ms. Hammer and Defendant Willich discussed that Defendant Ribí's violent conduct seemed to result from Ms. Hammer refusing Defendant Ribí's requests and therefore prohibiting him from getting what he wanted. Defendant Willich told Ms. Hammer that he would discuss this violent conduct with Defendant Ribí. Upon information and belief, Defendant Willich did discuss the same with Defendant Ribí.

63. During the January 21, 2010 Sun Valley City Council meeting, Defendant Willich again publicly reminded the City Council Members, and in particular Defendant Ribí, that City Council Members should contact him directly, not City personnel, regarding all City matters.

64. Continuing through January 2010 until about the end of May 2010, Defendant Ribí continued to contact Ms. Hammer, both telephonically and in person, and repeatedly demanded that she make modifications to the language of the Sun Valley City Council Powers and Authorities and Code of Conduct that was still being discussed by the City Council.

65. On each occasion, Ms. Hammer reminded Defendant Ribí of Defendant Willich's direction that City Council Members were to discuss such matters with Defendant Willich only, and not City employees. On each occasion, Defendant Ribí became angry and acted with hostility toward Ms. Hammer. In response to said confrontations, Ms. Hammer directed Defendant Ribí to discuss the issues with Defendant Willich.

66. In each instance, Ms. Hammer thereafter discussed Defendant Ribí's hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the angry and hostile conduct with Defendant Ribí. Upon information and belief,

Defendant Willich did do so.

67. On or about March 23, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí contacted Ms. Hammer, both telephonically and in person, regarding changes that he demanded be included in the Comprehensive Audited Financial Report being prepared by City staff.

68. During such confrontations, Ms. Hammer told Defendant Ribí that he had no authority to make or request any changes to the audited financial statements, which had been prepared by independent auditors and were part of the Comprehensive Audited Financial Report. Ms. Hammer also told Defendant Ribí that the remainder of the Comprehensive Audited Financial Report was the responsibility of City staff, and not the City Council. Defendant Ribí became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribí to discuss the issues with Defendant Willich.

69. Ms. Hammer thereafter discussed Defendant Ribí's improper angry and aggressive conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the angry conduct with Defendant Ribí. Upon information and belief, Defendant Willich did do so.

70. During the March 23, 2010 Sun Valley City Council meeting, Defendant Ribí angrily and in a hostile manner pounded with his fists on the table in front of him regarding his disagreement with Ms. Hammer on issues surrounding the Comprehensive Audited Financial Report. Defendant Ribí's physical actions were directed at Ms. Hammer and his disagreement was with her.

71. Also during the March 23, 2010 meeting, Ms. Hammer spoke with Defendant King, who was sitting next to her, about the inappropriate and frightening actions of Defendant

Ribi. Defendant King stated to Ms. Hammer that Defendant Ribi's conduct was inappropriate and unacceptable. After the meeting, Ms. Hammer further discussed Defendant Ribi's physical aggression and visual and verbal abuses toward her with Defendant Willich and Defendant King. Defendant Willich told Ms. Hammer that he would discuss the improper conduct with Defendant Ribi and, on information and belief, Defendant Willich did do so.

72. On or about May 20, 2010, a Sun Valley City Council meeting was held. During that meeting, Defendant Willich again publicly told all City Council Members that they were not to verbally abuse, or interrogate, any of the City's employees.

73. On or about June 3, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribi, both telephonically and in person, regarding the Property Tax Levy Policy that was being discussed by the City Council.

74. During those communications, Defendant Ribi demanded that Ms. Hammer make changes to language in the proposed Property Tax Levy Policy. Ms. Hammer told Defendant Ribi that those discussions were to be held with the entire City Council at a public Sun Valley City Council meeting and that any changes Defendant Ribi was seeking had to be made by the entire City Council. Defendant Ribi became angry and hostile toward Ms. Hammer. In response to such confrontations, Ms. Hammer directed Defendant Ribi to discuss the issue with Defendant Willich.

75. Ms. Hammer thereafter discussed Defendant Ribi's angry and hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribi and, upon information and belief, he did do so.

76. On or about June 28, 2010, the Sun Valley City Council passed a Tentative Budget for Fiscal Year 2011 ("Tentative 2011 Budget").

77. A day or two following the City Council's passage of the Tentative 2011 Budget, Defendant Frostenson discovered a math error that she had made in the calculation of the total amount of the Tentative 2011 Budget. Defendant Frostenson corrected the math error. The corrected amount was not presented to the City Council for further approval. The corrected Tentative 2011 Budget was approximately \$200,000 less than what had been approved by the Sun Valley City Council. The corrected Tentative 2011 Budget was published by the City in the Idaho Mountain Express.

78. Defendant Ribí saw the corrected Tentative 2011 Budget after it was published in the Idaho Mountain Express. After his review of the newspaper publication, Defendant Ribí called Ms. Hammer at City Hall. Defendant Ribí sounded very upset and agitated to Ms. Hammer. He immediately began berating her for the change in the corrected Tentative 2011 Budget as published in the Idaho Mountain Express.

79. Ms. Hammer attempted to discuss the matter with Defendant Ribí and offered several options for publicly resolving all of his concerns about the issue. Defendant Ribí yelled at Ms. Hammer, shouting words to the effect that she had no right to change the amount of the Tentative 2011 Budget after it had been approved by the City Council.

80. Ms. Hammer suggested that Defendant Ribí speak with Defendant Willich so that they could decide the best way to proceed on the issue. Defendant Ribí became increasingly angry, abusive and hostile, and continued to berate Ms. Hammer in a threatening manner.

81. Ms. Hammer was frightened by the tone and threatening manner of Defendant Ribí's voice and words. She told Defendant Ribí that he had no right to speak to her in that manner and that she was going to hang up the telephone, which she did.

82. Ms. Hammer immediately contacted Defendant Willich and described the incident

to him. She specifically told Defendant Willich that she had become seriously concerned about Defendant Ribi's volatile emotional state and about his inability to control his anger and aggression toward her. Ms. Hammer also told Defendant Willich that she was becoming increasingly fearful of Defendant Ribi. Defendant Willich told Ms. Hammer that he would discuss Defendant Ribi's behavior with him. Upon information and belief, Defendant Willich did do so.

83. In or about the summer of 2010, Ms. Hammer, Defendant Willich, and Defendant King met and discussed the multiple events of hostile and abusive conduct by Defendant Ribi toward Ms. Hammer.

84. Defendant King told Ms. Hammer that he had conducted legal research on the issue and decided that because Defendant Ribi was an elected official, there was nothing that could be done to discipline him. Defendant King stated that if Defendant Ribi were a City employee, Defendant Willich would have cause to fire Defendant Ribi for his harassing and hostile conduct. Defendant King advised Ms. Hammer and Defendant Willich that the only thing to be done was for Defendant Willich to continue to advise Defendant Ribi to refrain from acting in a harassing, abusive and hostile manner toward Ms. Hammer.

85. In or about August through September of 2010, the City was negotiating a marketing contract with Sun Valley Marketing Alliance.

86. Several times during that timeframe, Ms. Hammer was contacted by Defendant Ribi, both telephonically and in person, regarding the language of the draft marketing contract. During those communications, Defendant Ribi demanded that Ms. Hammer make changes to the language of the proposed marketing contract. His demanded changes had not been discussed with, or approved by, either Defendant Willich or the City Council.

87. Ms. Hammer told Defendant Ribi that his desired changes to the draft marketing contract had to be discussed with Defendant Willich and the entire City Council at a public City Council meeting. Ms. Hammer further advised Defendant Ribi that any changes he was seeking needed to be made by the entire City Council.

88. Council Member Ribi became angry and hostile toward Ms. Hammer. In response to his demands and harassing conduct, Ms. Hammer directed Defendant Ribi to discuss the issue with Defendant Willich. Ms. Hammer thereafter discussed Defendant Ribi's improper and hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribi. Upon information and belief, Defendant Willich did do so.

89. On or about October 21, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribi contacted Ms. Hammer, both telephonically and in person, regarding a contract for audit services that the City was negotiating with Eide Bailly, LLP. During those communications, Defendant Ribi demanded that Ms. Hammer make changes to the language of the proposed contract for audit services. His demanded changes had not been discussed with or approved by either Defendant Willich or the City Council.

90. Ms. Hammer told Defendant Ribi that his proposed changes had to be discussed with Defendant Willich and the entire City Council at a public Sun Valley City Council meeting. Ms. Hammer further advised Defendant Ribi that any changes he was seeking needed to be made by the entire City Council.

91. Defendant Ribi became angry and hostile toward Ms. Hammer because she refused to succumb to his demands regarding the contract for audit services. In response to his demands and hostile behavior, Ms. Hammer directed Defendant Ribi to discuss the issue with

Defendant Willich. Ms. Hammer thereafter discussed Defendant Ribi's hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribi. Upon information and belief, Defendant Willich did do so.

92. On or about November 18, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribi repeatedly contacted Ms. Hammer, both telephonically and in person, regarding the External Contract Policy that was being discussed by the City Council. During those communications, Defendant Ribi demanded that Ms. Hammer make changes to the language of the proposed External Contract Policy. Defendant Ribi's requested changes had not been discussed with or approved by the City Council.

93. In response to his demands, Ms. Hammer told Defendant Ribi that his demands had to be presented to the entire Sun Valley City Council at a public City Council meeting. She also told Defendant Ribi that any changes he was seeking needed to be made by the entire City Council. Defendant Ribi became angry and hostile toward Ms. Hammer for not acquiescing to his demands.

94. In response to the onset of anger from Defendant Ribi, Ms. Hammer directed him to discuss the issue with Defendant Willich. Ms. Hammer thereafter discussed Defendant Ribi's improper conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the improper conduct with Defendant Ribi. Upon information and belief, Defendant Willich did do so.

95. On or about March 17, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribi repeatedly contacted Ms. Hammer, both by telephone and in person, regarding several issues that were to be discussed at the March 17, 2011 City Council meeting, including but not limited to the City's Management Responses to the independent

auditors' Management Report, funding of consolidated dispatch services, and allowing City Council Members to have input in establishing City Council meeting agenda items. Defendant Ribí demanded that Ms. Hammer make changes to the language of the Management Responses to the Management Report.

96. During one such in-person confrontation, Ms. Hammer told Defendant Ribí that any issues related to funding of consolidated dispatch services and establishing City Council meeting agenda items needed to be discussed either directly with Defendant Willich, or publicly with the entire City Council at the March 17, 2011 meeting. Ms. Hammer also told Defendant Ribí that she would not make changes to the Management Responses to the Management Report without direction from Defendant Willich.

97. After Ms. Hammer refused to fulfill his demands, Defendant Ribí became very agitated and began pacing nervously in Ms. Hammer's office, shaking his hands in the air and saying in an agitated voice: "No, no, no! You don't understand!" Ms. Hammer was shaken by Defendant Ribí's conduct. Eventually, Ms. Hammer was able to defuse the situation and get Defendant Ribí to leave her office.

98. After the incident in her office, Ms. Hammer discussed Defendant Ribí's physically hostile and verbally abusive conduct toward her and her growing fear of him with Defendant Willich and Defendant King. Defendant Willich told Ms. Hammer that he would discuss the conduct with Defendant Ribí and, upon information and belief, Defendant Willich did do so. Defendant King again advised Ms. Hammer that no disciplinary action could be taken against Defendant Ribí because he was an elected official.

99. In or about late 2010 through early 2011, Ms. Hammer spent substantial amounts of time working with the City's external engineering firm, CH2M HILL, and Defendant Willich

preparing a detailed long-term Capital Improvement Plan ("CIP").

100. On or about April 7, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribi, telephonically and in person, regarding multiple issues related to the draft CIP that was being submitted to the City Council for review and approval at the upcoming meeting.

101. During one of the in-person confrontations, Defendant Ribi insisted that it was unnecessary for an engineer from CH2M HILL to be present at all subsequent CIP meetings. Ms. Hammer attempted to explain to Defendant Ribi that the engineer from CH2M HILL had developed the extensive spreadsheets incorporated into the CIP, that Ms. Hammer was unfamiliar with the details of the CIP spreadsheets, and that it was important for the CH2M HILL engineer to be personally present to make any changes in the CIP requested by the City Council. During that confrontation, Defendant Ribi refused to let Ms. Hammer speak and repeatedly said: "No, no, no – you don't understand!"

102. Also during that confrontation, Defendant Ribi demanded that Ms. Hammer make substantive changes to capital project items that were included in the draft CIP, herself, without any input from or approval of either Defendant Willich or the City Council. Again, Ms. Hammer told Defendant Ribi that he had to discuss his proposed changes with either Defendant Willich or the entire City Council at the upcoming April 7, 2011 public City Council meeting. Ms. Hammer also told Defendant Ribi that all of the changes he was seeking regarding capital projects in the CIP needed to be made by the entire City Council.

103. In addition to the substantive changes he wanted Ms. Hammer to unilaterally make to the CIP, Defendant Ribi was also adamant that multiple non-substantive modifications to the CIP, such as column sizes, colors and descriptions, be made.

104. When Ms. Hammer refused to make the substantive and non-substantive changes in the CIP as demanded by Defendant Ribí, he became livid and yelled at Ms. Hammer. Defendant Ribí yelled words at her to the effect that she did not know who she worked for, indicating that he believed she worked for him directly – not the City. Defendant Ribí's tirade continued to the point that Ms. Hammer became concerned that he would also become physically violent toward her.

105. Throughout Defendant Ribí's violent outburst, Ms. Hammer did her best to defuse the situation. Eventually, Ms. Hammer was able to get out of her office, away from Defendant Ribí, and walked to a different part of the Sun Valley City Hall.

106. Ms. Hammer thereafter again met with Defendant Willich and Defendant King, at which time she again expressed her concerns about Defendant Ribí's emotional wellbeing, and his continuing harassment and abuse of her. Defendant Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribí. Upon information and belief, Defendant Willich did do so.

107. On or about April 21, 2011, a Sun Valley City Council meeting was held. At that meeting, Defendant Willich again publicly and sternly warned the City Council, and in particular Defendant Ribí, that Defendant Willich would not tolerate any City Council Member directing any City employee on how to do their job. Defendant Willich also stated that City employees do not work for the City Council or any of its individual members. Defendant Willich explained that, by law, all City employees work for him, as the Mayor, not for the City Council.

108. Following Defendant Willich's instruction and warning during the April 21, 2011 City Council meeting, Defendant Ribí continued contacting Ms. Hammer directly and instructing her what to do in her job.

109. In or about May of 2011, Ms. Hammer met with Defendant King to discuss her ongoing complaints and concerns about Defendant Ribí. Defendant King advised Ms. Hammer that, based upon legal research he had conducted, because Defendant Ribí was an elected official, not a City employee, no disciplinary action could be taken against him.

110. In or about June of 2011, Defendant Ribí told Ms. Hammer in a telephone call that he wanted her to be responsible for maintaining the City's website. Shortly thereafter, Defendant Ribí confronted Ms. Hammer in person, blocking the doorway of her office in the Sun Valley City Hall. He stated that Ms. Hammer should be working on the City's website. Ms. Hammer told Defendant Ribí that David Blampied, the Sun Valley Administrative Assistant, was responsible for keeping the City's website up to date. Defendant Ribí became very angry. He raised his hands in the air and began shaking them, shouting: "No, no, no! You don't understand!"

111. Defendant Ribí said that David Blampied did not know how to keep the Sun Valley website up to date. Ms. Hammer told Defendant Ribí that she knew nothing about maintaining a website and suggested that he speak to Defendant Willich about the issue. Defendant Ribí then became more agitated and very angrily said words to the effect that Defendant Willich did not know how to do his job.

112. Eventually, Defendant Ribí left Ms. Hammer's office. Ms. Hammer thereafter met with Defendant Willich and discussed Defendant Ribí's demands that she be in charge of the City's website. They again discussed Ms. Hammer's concerns about Defendant Ribí's hostile conduct toward her. Defendant Willich told Ms. Hammer that he would discuss the issues of the City's website and Defendant Ribí's hostile conduct with him. Upon information and belief, Defendant Willich did do so.

113. On or about July 20, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí repeatedly contacted Ms. Hammer, both telephonically and personally at City Hall, regarding a contract with Cox Cable that the City was negotiating.

114. During those communications, Defendant Ribí demanded that Ms. Hammer spend substantial amounts of time researching cable service contracts of other similar municipalities. Ms. Hammer told Defendant Ribí that she took direction from Defendant Willich, not from him. And, Ms. Hammer told him that she would speak to Defendant Willich about his request to expand research related to the Cox Cable contract.

115. Defendant Ribí became angry and argumentative with Ms. Hammer. He angrily said words to the effect that Defendant Willich did not know what his job was. Ms. Hammer thereafter discussed Defendant Ribí's hostile conduct toward her with Defendant Willich. Defendant Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribí. Upon information and belief, Defendant Willich did do so.

116. Upon information and belief, or about August 2, 2011, Defendant Willich met with Defendant King at Defendant King's office in Ketchum, Idaho. The two met specifically to discuss Defendant Ribí's harassment and abuse of Ms. Hammer, as well as Defendant Ribí's mistreatment of several other City employees.

117. Upon information and belief, after the August 2, 2011 meeting with Defendant Willich, Defendant King, without authority from either Ms. Hammer or Defendant Willich, discussed in detail the harassment complaints and concerns about Defendant Ribí's conduct with Defendant Ribí. Defendant King never disclosed to Ms. Hammer or Defendant Willich that Defendant King had thereafter spoken with Defendant Ribí regarding the complaints against Defendant Ribí.

118. On or about September 15, 2011, a Sun Valley City Council meeting was held. During the meeting, discussion was held regarding acceptable methods for modifying budgeted line items.

119. During a break, Ms. Hammer was trying to explain to Defendant Ribí the generally accepted accounting practices and procedures for modifying municipal budgets. Defendant Ribí became very agitated and continuously interrupted Ms. Hammer to tell her how he wanted the particular procedure done. Defendant Ribí's proposed budgeting procedure contravened the generally accepted accounting practices.

120. Every time Ms. Hammer tried to speak to Defendant Ribí about the correct budgeting procedures, he would cut her off, raise his arms in the air and begin waiving his hands, saying angrily: "You don't understand!" As the conversation continued, Defendant Ribí became more and more enraged.

121. Eventually, Ms. Hammer told Defendant Ribí that she was going to discuss the matter with Defendant Willich. At that point, Defendant Ribí raised his arms, turned toward Ms. Hammer and, in a physically threatening manner, yelled: "No! You will not talk to the Mayor!"

122. In reaction to Defendant Ribí's physically and verbally violent outburst, Ms. Hammer was alarmed, immediately stepped back and away from Defendant Ribí, and stated: "Whoa!" As a result of Defendant Ribí's physical actions and yelling directed at Ms. Hammer, she was fearful of harmful or offensive contact with her body by Defendant Ribí.

123. Ms. Hammer then turned away from Defendant Ribí and walked down the hallway of City Hall and back into the Sun Valley City Council Chamber where Defendant Willich, several City Council members and several City staff were present. Defendant Ribí

followed Ms. Hammer down the hallway and into the Sun Valley City Council Chamber, and acted as if nothing had happened.

124. This incident was witnessed by City employee David Blampied. Upon information and belief, several City employees either witnessed Defendant Ribi's assault of Ms. Hammer or heard some or all of the altercation.

125. Immediately following the City Council meeting of September 15, 2011, Ms. Hammer held meetings with Defendant Willich, Defendant King, and Sun Valley Police Chief Cam Daggett. During each meeting, Ms. Hammer described the physical altercation by Defendant Ribi. Ms. Hammer also expressed her concern over Defendant Ribi's increasingly agitated, erratic and threatening behavior, and sought advice on how to respond to Defendant Ribi. Police Chief Daggett suggested that Ms. Hammer shut and lock her door when she knew Defendant Ribi to be at the Sun Valley City Hall. He also suggested that Ms. Hammer consider recording her conversations with Defendant Ribi. In turn, Defendant King agreed that Police Chief Daggett's suggestions were appropriate.

126. Upon information and belief, Defendant Willich spoke with Defendant Ribi and directed him to not act with aggression toward Ms. Hammer. Upon information and belief, Defendant Willich instructed Defendant Ribi to come to him with any request that Defendant Ribi would have otherwise sought from Ms. Hammer or any other City employee.

127. Upon information and belief, in or about November 2011, Defendant Ribi and Defendant King directly contacted City employees, Defendant Michelle Frostenson and Defendant Kelly Ek, and requested employment documents regarding or relating to Ms. Hammer and Defendant Willich. Upon information and belief, Defendant Ribi was provided copies of confidential employment and payroll records by Defendant Frostenson and/or Defendant Ek.

128. Upon information and belief, in or about November 2011, Defendant Ribí and Defendant King further distributed the ill-gotten and allegedly accusatory confidential employment materials regarding Ms. Hammer to Defendants Youngman and Briscoe, and the men utilized said materials during communications between and among each other to craft a plan for Ms. Hammer's termination.

129. On or about November 10, 2011, prompted by Defendant Ribí, Defendants Ribí, Briscoe and Youngman called for a Special Executive Session of the Sun Valley City Council to be held on November 11, 2011. On or about November 11, 2011, a Special Executive Session was held. Upon information and belief, Defendants Ribí, Youngman, Briscoe, King, Willich, and Frostenson attended the meeting.

130. Upon information and belief, during the November 11, 2011 meeting, prompted by Defendants Ribí and King, Defendant Frostenson presented the ill-gotten and allegedly accusatory confidential employment documents regarding Ms. Hammer to Defendants Willich, Youngman and Briscoe. Upon information and belief, Defendants Ribí, Youngman and Briscoe then demanded that Ms. Hammer be terminated or forced to resign. Upon information and belief, Defendant King provided legal advice to Defendants Willich, Briscoe (then Mayor-elect), Youngman and Ribí in furtherance of Ms. Hammer's termination.

131. Following the November 11, 2011 meeting, Defendants Willich and King confronted Ms. Hammer in her office at Sun Valley City Hall. Defendant Willich told Ms. Hammer that she had been accused of theft, fraud and embezzlement. Defendant King told Ms. Hammer that they were considering pursuing criminal charges against her. Defendant Willich then told Ms. Hammer that he had been directed by Defendants Ribí, Youngman and Briscoe, based upon Defendant King's legal advice, to seek Ms. Hammer's resignation.

132. After being informed of the accusations, Ms. Hammer requested specific information that supported the accusations. Ms. Hammer also requested an opportunity to address the Sun Valley City Council regarding the same.

133. Ms. Hammer also advised Defendants Willich and King that she would not resign.

134. Defendant Willich then told Ms. Hammer that he, personally, did not believe the allegations, and that he felt it was a “witch hunt.”

135. Ms. Hammer was never provided with any written allegations of misconduct against her. Nor was Ms. Hammer ever provided with any type of evidence in support of any claims of misconduct against her. Ms. Hammer was never allowed to address the City Council regarding said allegations.

136. On or about November 13, 2011, Ms. Hammer’s former legal counsel provided written notice to the City and its elected officials of the on-going harassment of Ms. Hammer by Defendant Ribí, which had culminated in the November 11, 2011 meeting and Defendants Ribí, Youngman, and Briscoe’s attempt to force her resignation. That notice also requested that Defendant King recuse himself from any further proceedings regarding Ms. Hammer. Defendant King disregarded the request of recusal.

137. On or about November 14, 2011, the Sun Valley City Council held a continuation of the November 11, 2011 Special Executive Session. Upon information and belief, the November 14, 2011 Special Executive Session was attended by Defendants Ribí, Youngman, Briscoe, King, and Willich. Following that Special Executive Session, Defendants Youngman and Briscoe voted in favor of a special investigation to be conducted by an independent investigator into the alleged accusations of wrongdoing by Ms. Hammer. Upon information and belief, the special investigation was also to examine the claims of harassment and assault by

Defendant Ribi against Ms. Hammer. Defendant Ribi voted against a special investigation being conducted.

138. On or about November 18, 2011, Ms. Hammer was provided with written notice, prepared by Defendant King and signed by Defendant Willich, that she was being placed on administrative leave from her positions as City Administrator and paid-on-call firefighter/EMT. Ms. Hammer was provided with no explanation regarding the reason for being placed on administrative leave.

139. In or about November 2011, Ms. Hammer filed a complaint in the Blaine County District Court and a complaint with the Idaho Human Rights Commission. Both complaints were regarding and relating to Ms. Hammer's claims of harassment and retaliation by the Defendants. By December 2011, all Defendants had knowledge of the District Court and Idaho Human Rights Commission complaints.

140. In or about November 2011 through January 2012, Defendants Ribi, Frostenson, Briscoe, as well as the City's outside legal counsel retained to defend the City against Ms. Hammer's filed complaints, and upon information and belief other City representatives, continued harassing Ms. Hammer by making statements to and/or about her to the effect that if Ms. Hammer did not voluntarily resign, then the City would file criminal charges against her.

141. In or about late December 2011, the City's special investigation was concluded. Based on the findings of the investigation, Defendant Willich determined that Ms. Hammer had done nothing wrong, and requested that she return to work immediately. Pursuant to the Manual, Defendant Willich's decision was final and binding.

142. On or about December 27, 2011, Ms. Hammer returned to her normal duties as City Administrator and paid-on-call firefighter and EMT.

143. On January 3, 2012, Defendant Briscoe was sworn into office as the Mayor.

144. On January 4, 2012, Defendant Briscoe placed Ms. Hammer back on administrative leave. Ms. Hammer was provided with no explanation regarding the reasons for being re-placed on administrative leave.

145. On January 19, 2012, Defendant Briscoe, following the unanimous vote of Defendants Youngman, Ribí, Suhadolnik, and Griffith, terminated Ms. Hammer from her position as City Administrator.

146. Ms. Hammer has never been provided with any written explanation regarding the reasons for her termination. Ms. Hammer has requested that the City hold a hearing and afford her due process to defend any allegations of misconduct. The City has refused to hold any sort of hearing regarding or relating to her termination.

147. Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of a written announcement regarding Ms. Hammer's termination. Defendant Briscoe instructed and/or authorized the City to purchase newspaper advertisement space in the Idaho Mountain Express, where the press release was published, in the color red, within a day or two of her termination.

148. Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of at least two additional press releases by the City regarding or relating to allegations of misconduct and/or harassment of other City employees by Ms. Hammer. The press releases imply that Ms. Hammer was guilty of the alleged misconduct. Defendant Briscoe instructed and/or authorized the City to purchase newspaper advertisement space in the Idaho Mountain Express, where the press releases were published.

149. Defendant Briscoe's public statements have had a deleterious and harmful affect

on Ms. Hammer's ability to obtain new employment.

150. Before and after Ms. Hammer's termination, Defendant Ribí did, and continues to, maintain a website and a blog; both of which recount and discuss allegations of misconduct and/or harassment of other City employees by Ms. Hammer. Content within Defendant Ribí's website and blog imply that Ms. Hammer was guilty of the alleged misconduct.

151. Defendant Ribí's public statements have had a deleterious and harmful affect on Ms. Hammer's ability to obtain new employment.

COUNT I

RETALIATORY DISCHARGE PER IDAHO CODE §§ 6-2101, *et seq.*

152. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

153. At all times relevant hereto, Ms. Hammer had a valid and enforceable contract of employment with the City.

154. During Ms. Hammer's employment as City Administrator, Defendant Ribí did intentionally instruct her and attempt to direct her work as City Administrator. Defendant Ribí also intentionally harassed her, and then sought Ms. Hammer's termination after she repeatedly refused to fulfill his demands. (*See infra*, ¶¶ 42-145.)

155. During her employment as City Administrator, Ms. Hammer made over twenty (20) complaints to Defendant Willich and/or Defendant King regarding Defendant Ribí's harassment of her. (*See infra*, ¶¶ 46-126.)

156. Each complaint of harassment by Ms. Hammer was a protected activity pursuant to the Manual and Idaho Code §§ 6-2101, *et seq.*

157. As a result of Ms. Hammer's refusals to fulfill Defendant Ribí's unauthorized

demands for information, he verbally, physically and visually harassed Ms. Hammer.

158. As a result of Ms. Hammer's complaints to Defendants Willich and King regarding Defendant Ribí's verbal, physical and visual harassment of her, Defendant Ribí, in concert with Defendants Briscoe, Youngman and King, did actively seek to terminate or force the resignation of Ms. Hammer.

159. On November 18, 2011, Ms. Hammer was placed on administrative leave by the City.

160. On January 4, 2012, Ms. Hammer was again placed on administrative leave by the City.

161. Ms. Hammer was terminated from her position as City Administrator on January 19, 2012, by Defendant Briscoe following a unanimous vote of the Sun Valley City Council, then comprised of Defendants Youngman, Ribí, Suhadolnik, and Griffith.

162. Ms. Hammer's persistent rejections of performing acts for Defendant Ribí, at his personal behest and for his personal purposes, caused Defendant Ribí to intentionally and detrimentally interfere with the intra-office relationships between Ms. Hammer and, at least, Defendants Ek and Frostenson.

163. Ms. Hammer's persistent rejections of performing acts for Defendant Ribí, at his personal behest and for his personal purposes, caused Defendant Ribí to intentionally and detrimentally interrupt the daily operations of the City.

164. As a result of Defendant Ribí's success in causing interference and discord between Ms. Hammer and at least Defendants Ek and Frostenson, these City employees provided Defendant Ribí with confidential City documents and other materials that allegedly implicated Ms. Hammer of wrongdoing.

165. Defendants Ribí and King presented such ill-gotten, accusatory materials to all other Defendants and commenced a campaign for the termination and public disparagement of Ms. Hammer.

166. Ms. Hammer was twice placed on administrative leave from her positions as City Administrator and firefighter and EMT as a result of her persistence in reporting violations and suspected violations of the Manual by Defendant Ribí to Defendants Willich and King.

167. Ms. Hammer was terminated from her positions as City Administrator and firefighter and EMT as a result of her persistence in reporting violations and suspected violations of the Manual by Defendant Ribí to Defendants Willich and King. Ms. Hammer was also terminated from her positions as a result of filing complaints with the Blaine County District Court and the Idaho Human Rights Commission.

168. Some or all of the foregoing acts and/or omissions engaged in by Defendants Ribí and Briscoe were done outside of the course and scope of their employment and with malice or with reckless disregard of Ms. Hammer's protected rights.

169. As a direct and proximate result of the unlawful and intentional reprisals against Ms. Hammer because she engaged in protected activities, Ms. Hammer has suffered severe economic damages, including but not limited to a loss of past and future wages, retirement benefits, medical benefits, other fringe benefits, and other losses to be proven at trial. Ms. Hammer has also suffered emotional damages, including but not limited to public ridicule, contempt, and hatred; embarrassment; emotional pain and suffering; and loss of enjoyment of life.

ATTORNEY FEES AND COSTS

Plaintiff has been forced to incur attorney fees and costs related to the prosecution of this

matter. Plaintiff is entitled to recover her reasonable costs and attorney fees pursuant to Idaho Code § 6-2105(1), Idaho Rule of Civil Procedure 54, and/or other applicable law.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of no less than twelve (12) persons on all issues to be tried.

NOTICE OF RESERVATION OF RIGHT TO AMEND

Plaintiff reserves the right to ask the Court for leave to amend any and all of her allegations and counts contained herein to conform to the evidence of record and facts subsequently learned by Plaintiff. Plaintiff also reserves the right to amend any and all of her allegations and counts contained herein to include a claim for punitive damages.

DEMAND FOR JUDGMENT FOR RELIEF

WHEREFORE, Plaintiff prays for relief against the Defendants as follows:

1. An order reinstating the Plaintiff to the same position held before she was wrongfully terminated;
2. An order reinstating the Plaintiff's full fringe benefits and seniority rights;
3. An award of special and general damages for injury or loss caused by each violation of the Idaho Protection of Public Employees Act, including but not limited to lost wages, benefits and other remuneration;
4. An award of pre-judgment and post-judgment interest as allowed by law;
5. An award of attorney fees and costs, or \$20,000 as reasonable attorney fees and costs in the event judgment is obtained by default;
6. Any further relief to which the Plaintiff is entitled as the Court may deem just and equitable, including the right to seek leave to claim awards of punitive damages.

DATED this 29th day of June, 2012.

JONES & SWARTZ PLLC

By

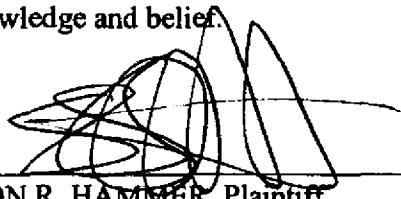
A handwritten signature in black ink, appearing to read "Joy M. Vega", is written over a horizontal line.

ERIC B. SWARTZ
JOY M. VEGA

VERIFICATION

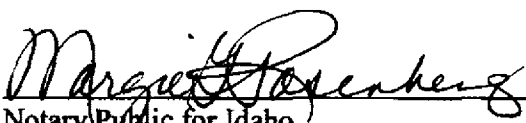
STATE OF IDAHO)
 : ss.
County of Ada)

The Plaintiff, being sworn, having read the foregoing, says that the facts set forth therein are true, accurate, and complete to the best of Plaintiff's knowledge and belief.

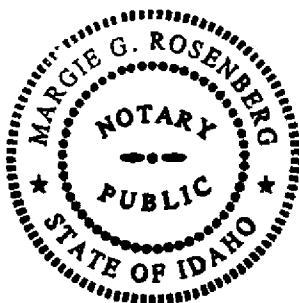


SHARON R. HAMMER, Plaintiff

SUBSCRIBED AND SWORN TO before me this 29th day of June, 2012.



Notary Public for Idaho
My Commission expires: 5/11/16



**EXHIBIT 1 TO
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL [I.C. §§ 6-201 *ET SEQ.*]**

**EXHIBIT 1 TO
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL [I.C. §§ 6-201 *ET SEQ.*]**



**CITY OF SUN VALLEY
PERSONNEL POLICIES & PROCEDURES MANUAL**

Adopted by the Mayor and City Council
Resolution No. 1997-2 January 16, 1997
Resolution No. 1997-9 January 16, 1997
Resolution No. 2001-03 May 16, 2001
Resolution No. 2004-08 November 18, 2004
Resolution No. 2007-06 February 15, 2007
Resolution No. 2007-12 March 15, 2007



WELCOME!

Welcome to the City of Sun Valley. We congratulate you on your decision to join us. We trust you will be happy with this decision. Every effort will be made on our part to accomplish this end.

The City of Sun Valley has carefully selected you to be one of its Employees. We realize that our strength and future growth depends directly on the efforts of all our Employees. Cities are successful due to the results obtained from sincere and enthusiastic Employees who work together as a team to provide the highest level of services to residents and visitors.

All jobs are important at the City of Sun Valley. No matter what your assignment may be, you can be assured that it is important and that the degree of efficiency and professionalism you demonstrate will have bearing on your future and on the future of the City organization and the residents and visitors we serve.

MISSION STATEMENT

We, the Employees and elected officials of the City of Sun Valley, are dedicated to providing a positive environment wherein the quality of life and economic well-being of all who live, visit and work in Sun Valley may be preserved.

The success of the City of Sun Valley relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens through the personal contributions of all.



TABLE OF CONTENTS

SECTION 1: GENERAL POLICIES	Page Numbers
1.1 Purpose.....	1-1
1.2 Establishment of Policies and Procedure.....	1-1
1.3 Equal Employment Opportunity	1-1
1.4 At Will Employment Policy.....	1-2
1.5 Employment Agreements	1-2
 SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES & PROCEDURES	
2.1 General Administration.....	2-1
2.2 Distribution.....	2-1
 SECTION 3: EMPLOYMENT PRACTICES	
3.1 Appointing Authority.....	3-1
3.2 Administration Authority	3-1
3.3 Personnel Records	3-1
3.4 Recruitment and Selection Procedures	3-2
3.5 Appointments.....	3-3
3.6 Employment of Relatives	3-3
3.7 Transfers	3-4
3.8 Resignations/Dismissals.....	3-4
3.9 Hours of Work.....	3-4
3.10 Attendance and Punctuality	3-4
3.11 Work Schedules	3-5
3.12 Resident Requirements	3-5
3.13 City Vehicles.....	3-5
3.14 Travel Expense Reimbursements	3-5
3.15 Electronic Communication Systems Usage Policy	3-6
 SECTION 4: JOB DESCRIPTIONS & SALARY PLAN	
4.1 Job Descriptions	4-1
4.2 Full Time and Part Time Status.....	4-1
4.3 Seasonal & Temporary Employees.....	4-2
4.4 Volunteers.....	4-2
4.5 Exempt Employees.....	4-2
4.6 Salary Plan	4-3
4.7 Pay Periods.....	4-4
4.8 Overtime Pay.....	4-4
 SECTION 5: BENEFITS	
5.1 Holidays	5-1
5.2 Vacation.....	5-1
5.3 Sabbatical Leave.....	5-2
5.4 Sick Leave	5-2
5.5 Medical Insurance	5-3
5.6 Family Care & Medical Leave Policy	5-3
5.7 Life Insurance.....	5-3



5.8 Workers Compensation Insurance	5-3
5.9 State Unemployment Insurance, Social Security Benefits	5-3
5.10 Section 457 Deferred Compensation	5-4
5.11 Special Leave	5.4

SECTION 6: EMPLOYEE EVALUATION

6.1 Evaluation Procedure	6-1
6.2 Appeal	6-2

SECTION 7: STANDARDS OF CONDUCT

7.1 Purpose	7-1
7.2 Safety Policy	7-1
7.3 Conflict of Interest	7-1
7.4 Confidentiality of Records	7-1
7.5 Harassment Policy	7-1
7.6 Substance Abuse	7-3
7.7 Outside Employment	7-3
7.8 Proprietary Rights	7-3
7.9 Dress & Personal Grooming	7-4
7.10 Smoke-Free Work Environment	7-4
7.11 Gratuities	7-4

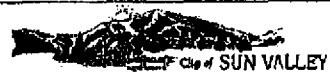
SECTION 8: DISCIPLINE

8.1 Policy & Purpose	8-1
8.2 Supervisory Responsibility	8-1
8.3 Applicability	8-1
8.4 Causes for Disciplinary Action	8-1
8.5 Forms of Disciplinary Action	8-2
8.6 Administration of Discipline	8-3
8.7 Informal Review	8-3

APPENDICES

Appendix A: Medical Insurance	A-1
Appendix B: Federal Family & Medical Leave Act	A-2
Appendix C: Life Insurance	A-3

Acknowledgment of Receipt of City of Sun Valley Manual & Policy Updates



CITY OF SUN VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL

ACKNOWLEDGMENT OF RECEIPT

I, _____ acknowledge receipt of the City of Sun Valley Personnel Policies and Procedures Manual and/or any amendments or changes to the Manual.

I understand that I have thirty (30) days to read and review the Manual and to fully understand the provisions in the Manual.

I understand that this Manual is not a contract and cannot create a contract.

I understand that I am obligated to perform my duties of employment in conformance with the provisions of the Manual and any additional rules, regulations, policies or procedures of the department in which I work whether or not I choose to read the Manual or any amendments or changes to the Manual.

Signature of Employee

Title: _____

Date: _____



SECTION 1: GENERAL POLICIES

1.1 PURPOSE

The purpose of the *Personnel Policies and Procedures Manual* is to set forth the standards, procedures, and regulations guiding employment with the City of Sun Valley. It is predicated on the belief that achievement of the City's goals and objectives rests primarily on the efforts, dedication and cooperation of the Employees. In order to maintain efficient and effective City services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered. Where federal law or funding source regulations are in conflict with this Manual, the City shall follow such laws or regulations as applicable.

1.2 ESTABLISHMENT OF POLICIES AND PROCEDURES

The *Personnel Policies and Procedures Manual* shall be prepared and maintained by the City Administrator or his/her designee. In response to changes in applicable laws, regulations and changing conditions within the City, the City Administrator shall periodically review and recommend additions, deletions or amendments to these policies to the Mayor and Council. Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation.

The Manual, with all adopted amendments and changes, supersedes all previous policies not consistent with the provisions hereof. The Manual, however, it is not intended to be an exclusive source of rules and regulations concerning employment. Individual City departments are entitled to establish work standards and procedures necessary to implement City policy or to efficiently carry out the functions of the department, provided such standards do not diminish the benefits or protections granted to Employees by City policy.

The contents of this Manual are subject to modification at any time without notice. The City reserves the right to revise, supplement or rescind any of the provisions of the Manual as deemed appropriate. It is understood that any such modification may alter the rights and obligations of the City to its Employees. The City reserves the right to change these policies and procedures as the City deems appropriate.

1.3 EQUAL EMPLOYMENT OPPORTUNITY POLICY

The selection of all City Employees and all employment decisions, including classification, transfer, discipline and discharge will be made without regard to race, religion, gender, age, national origin. No job, or class of jobs, will be closed to any individual except where a mental or physical attribute, gender or age is a bona fide occupational qualification. It is the policy of City to comply as applicable with the Americans with Disabilities Act. All objections to application of the City's Equal Employment Opportunity Policy shall be brought to the attention of the City Administrator or in the case of objection to actions undertaken by the City Administrator to the Mayor.



1.4 AT WILL EMPLOYMENT

The Personnel Policies and Procedures Manual is not a contract. All Employees of the City are Employees "At Will" and may be terminated at any time with or without cause.

1.5 EMPLOYMENT AGREEMENTS

The City may enter into written employment agreements with any Employee. The provisions of any employment agreement shall supercede this Manual in the event of a conflict.



SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES AND PROCEDURES

2.1 GENERAL ADMINISTRATION

Authority for the administration of Personnel Policies and Procedures is delegated to the City Administrator, who is responsible to and directed by the Mayor, and who is responsible for the City's day-to-day operations.

- A. It shall be the responsibility of the City Administrator to provide interpretation and advice to Department Heads and Supervisory staff concerning the application of these policies and procedures. The City Administrator shall make the final determination of questions of interpretations of these policies and the application of these policies.
- B. City Attorney: As the legal counsel for the City, the City Attorney shall provide professional legal advice and services to the City Administrator and Mayor on matters related to these policies and procedures.

2.2 DISTRIBUTION

At the time of employment, each Employee shall receive a copy of this Manual. It is the responsibility of the Employee to familiarize him or herself with the contents of the Manual and to acknowledge its receipt in writing. Periodic updates or changes shall also be acknowledged in writing.



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SECTION 3: EMPLOYMENT PRACTICES

3.1 APPOINTING AUTHORITY

The appointment and discharge of the City Administrator, City Clerk, City Treasurer and City Attorney shall be made by the Mayor and approved by the majority of the City Council. All other personnel shall be appointed or discharged by the City Administrator.

3.2 ADMINISTRATION AUTHORITY

The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor. All other personnel, including the City Clerk and City Treasurer, shall be directly supervised and evaluated by the City Administrator.

3.3 PERSONNEL RECORDS

Complete and permanent records of the employment history of each current and former Employee of the City shall be maintained by the City Administrator's office. These files shall contain all documents permitted by Federal and State law. No document shall be placed in an Employee's file without his/her knowledge and receipt of a copy of same.

Personnel records are confidential documents and are only to be reviewed by those staff on a need to know basis. Such review is restricted to the Employee, the Employee's Supervisory chain, the City Administrator and the Mayor.

The City Administrator is responsible for assuring that the following information and documents are included in each Employee's Personnel File:

1. The original employment application and resume;
2. A copy of the offer letter;
3. Copies of all personnel action forms, such as change of name or address, salary and wage adjustments, promotion or demotions, separations, disciplinary actions, or records of leaves of absences;
4. Copies of performance appraisals;
5. Copies of all licenses and certificates pertinent to the job requirements;
6. The Employee's signed statement of having received, read and understood the City of Sun Valley's Personnel Policies & Procedures Manual; and
7. A copy of the Employee's background investigation and verification of references.

The City Administrator's Office will maintain separate Employee records as the Employee's Payroll Record File, which will include the following:

1. A copy of the Employee's W-2 form;
2. A copy of the Employee's Employment Eligibility Verification Form (Form I-9), required for all Employees by the U. S. Department of Justice, Immigration and Naturalization Service;



3. A copy of the Employee's PERSI application and authorization for salary deduction to provide for benefits;
4. A copy of any authorization for salary deduction for benefits;
5. Copies of the Employee's selection of benefits;
6. Time and attendance records;
7. Payroll records;
8. Wage garnishments.

The confidentiality of all individual Employee records shall be strictly enforced subject to the conditions outlined above. An Employee's Personnel File and Payroll Record File shall not be removed from the City Administrator's office except upon written approval of the City Administrator.

3.4 RECRUITMENT AND SELECTION PROCEDURES

The employment hiring process will be comprised of the following stages:

- A. Vacancies: When a vacancy occurs, a request to fill the vacant position shall be prepared by the respective Department Head and presented to the City Administrator. It shall include information pertinent to the decision of whether or not to fill the vacancy. The City Administrator shall review the budget to ensure that each vacancy is within its budgeted position allocation. The City Administrator shall also consider the availability of in-house candidates to fill the vacancy.
- B. Recruitment Process: The recruitment process will begin when a request is received and approved by the City Administrator. The City Administrator will determine whether the recruitment will proceed as an "open competitive," a "closed promotional," or an "open/promotional" opportunity. The City Administrator shall determine the recruiting sources to be used and the recruitment time period, taking into account the City's needs, recruitment strategy, and any special requirements of the position.
- C. Notice of Recruitment: Notice of all City recruitments shall be posted on the City's bulletin boards or other designated locations for a period of at least three business days. This notice shall include the deadline for filing applications.
- D. Types of Examinations:
 1. Open Competitive: This recruitment shall be open to the public. Such recruitment shall be used to fill entry level vacancies, and vacancies above the entry level where sufficient qualified applicants for promotion are not available.
 2. Closed Promotional: This recruitment shall be open only to regular and probationary Employees of the City who meet the minimum requirements as set forth in the promotional recruitment's job announcement.



3. Open and Promotional: When in the interests of the City, an external search is deemed necessary to fill a particular position, a promotional recruitment may also be open to the public.

- E. Application Process: All applications for employment shall be made on an official City application form. The form will require information covering a candidate's education, training, experience, and other information deemed pertinent and allowable by law. When the position to be filled requires special or exceptional
- F. Selection Methods: Applicants for positions shall meet the minimum qualifications of the position for which they have applied. Qualifications shall be evaluated on the basis of information provided on the application form, resume, and any supplemental documents required by the City, as well as on written and performance test scores, interview scores and background investigations.

3.5 APPOINTMENTS

When a candidate has been chosen for a position, the City Administrator shall prepare an offer letter. This letter will contain the following information:

1. The position title;
2. The effective date of hire;
3. The wage/salary which will be offered; to include any intent and purpose to adjust salary not related to merit increase;
4. The working hours;
5. Notice that the appointment is contingent upon successful completion of a physical examination, if the position is in a classification which requires such;
6. A copy of the job description; and
7. A signature block for the candidate to sign, indicating that he/she has accepted the position under the above circumstances.

A copy of the offer letter shall be kept in the Employee's permanent personnel file.

3.6 EMPLOYMENT OF RELATIVES

The City does not employ members of an Employee's immediate family, unless the City Administrator approves this arrangement.



3.7 TRANSFERS

An Employee may request a transfer from one department to another, providing the position that the Employee wishes to transfer to is in the same classification series and that the position is an equal or lower classification in the series than the classification in which the Employee is currently. In addition, the Employee must meet the minimum qualifications for the position as set forth in the classification specification documents.

The Employee shall direct his/her request to the City Administrator. The request shall then be forwarded to the appropriate Department Head. Such requests shall be given consideration when a suitable vacancy occurs and must be approved by the City Administrator.

This transfer policy is not designed to, nor does it create any contract right, express or implied, to a transfer, nor does the City's refusal to grant an Employee's request for transfer give rise to any claims against it. The City reserves the right to fill any vacancy by transfer or by other recruitment means, as deemed appropriate by the City Administrator.

3.8 RESIGNATIONS/DISMISSALS

Upon an Employee's resignation or dismissal, records pertaining to the separation of the Employee shall remain part of the Employee's permanent personnel file. The City Administrator shall ensure that separations from employment are handled in a manner that will not interrupt the orderly operation of City business.

Upon separation from employment, an Employee shall be paid for any wages/salary due and for all unused vacation time at the Employee's regular rate of pay within 48 hours of separation from service. In the event of an Employee's death, the estate of the Employee shall be paid all of the Employee's accrued salary and vacation leave.

3.9 HOURS OF WORK

The City Administrator shall determine the hours during which City office and departments shall be open to serve the public. The hours of work of individual positions may be proposed by the respective Department Head and approved by the City Administrator in order to serve the needs of the City.

The work schedule will normally provide for a work week of forty (40) hours within a seven-day period, from 8:00 a.m. to 5:00 p.m., including a lunch period. Other work schedules may be established by the City Administrator in order to meet the needs of specific City services.

3.10 ATTENDANCE AND PUNCTUALITY

Employees are expected to be at work on their normally scheduled workdays, unless they have received approval for an absence from their immediate Supervisor. An Employee who is absent from work for three (3) consecutive working days, without Supervisory authorization or a statement of justification from an attending physician, will be considered to have abandoned



his/her job as of the last day of active employment, and will be declared to have voluntarily quit, unless the City subsequently determines that the absence was due to circumstances beyond the Employee's control. Because of overtime requirements, non-exempt positions should not begin work before their assigned time nor leave work later than their assigned ending time without the prior approval of their Supervisor.

Non-exempt Employees who are more than ten (10) minutes late to their assigned place of work are considered tardy. An Employee who regularly fails to arrive at work on time without a legitimate reason or who does not notify his/her Supervisor is subject to disciplinary action. The Supervisor shall determine whether the reason given is legitimate. Employees who cease and/or leave work before the end of their assigned work day shall also be subject to disciplinary action.

3.11 WORK SCHEDULES

The City Administrator will work with the Department Heads to establish normal work schedules. The City retains the right to alter work schedules in order to best meet the needs of the organization and of the public.

3.12 RESIDENT REQUIREMENTS

The Fire Chief, Assistant Fire Chief and Street Superintendent are required to reside within the incorporated limits of Sun Valley or Ketchum. The City may on an annual basis provide a housing allowance or suitable housing to aid in the additional costs of nearby residency. In addition, emergency services departments may adopt restrictions on travel time and distance requirements for Employees or volunteers in order to accomplish Employee response during emergencies.

3.13 CITY VEHICLES

Drivers of City-owned vehicles or drivers of private vehicles while on City business shall obey all traffic and speed laws. The use of seat belts is required at all times. Controlled substances shall never be carried in a City vehicle or a private vehicle on City business, with the exception of evidence by law enforcement officials.

City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor.

The Fire Chief is provided City-owned vehicles which may be taken home and used during any work period for travel within or out of the City. In the absence of the Fire Chief, the Assistant Fire Chief may use the City-owned vehicle during any work period for travel within or out of the City.

3.14 TRAVEL EXPENSES REIMBURSEMENT

Reimbursement for expenses incurred when an Employee is traveling on City business shall be



according to the following:

1. Prior to traveling outside the County, the Employee shall make written application and obtain approval from the Supervisor for the trip. Travel requests shall include an estimate of the costs involved.
2. Requests for reimbursement of expenses shall be submitted on a travel expenses form. All expenditure receipts shall be submitted when a request for reimbursement is made.
3. The City Administrator will set maximum per diem allowances for meals.
4. If an Employee is authorized to use his/her private vehicle for City business, mileage shall be paid at the rate set by the Federal tax reimbursement rate.

3.15 ELECTRONIC COMMUNICATION SYSTEMS USAGE POLICY

A. PURPOSE: The availability of electronic communication systems within the work environment provides many opportunities for enhancement of productivity and effectiveness. These systems also entail the opportunity for rapid transfer and broad dissemination of sensitive material that can have damaging effects on the City of Sun Valley, its employees, and the public, if not managed properly. It is important, therefore, that the City of Sun Valley establish a policy which provides direction to City employees regarding the purchase, lease, license and use of electronic communication systems.

B. ADMINISTRATION: The City Administrator or her/his designee shall be responsible for the implementation of the Electronic Communication System Usage Policy.

C. DEFINITIONS:

1. Electronic Communications System includes cell phones, PDA's, hardware, software, webpage, computers, electronic mail systems (email), voice mail systems, paging systems, electronic bulletin boards, Internet services, fax machines, mobile digital terminals (MDT), and any part of the City of Sun Valley leased or acquired network system(s) of any sort.
2. Computer - A programmable electronic device that can store, retrieve, and process data, including any computer issued or maintained by the City of Sun Valley, including but not limited to both laptop and desktop versions, or any computer which is attached to or a part of the City of Sun Valley computer network.
3. Hardware - The physical components of a computer, including the monitor, keyboard, central processing unit, floppy drives, CD-ROM drives, external storage media, and all peripheral accessories, including but not limited to, network connections, printers, scanners, speakers, printer cables and mouse.



4. License - To permit or authorize the use of.
5. Network System - The hardware and software which provides for the interconnection of City computers.
6. Programming - A sequence of coded instructions that can be inserted into a mechanism (such as a computer) to work out a series of instructions.
7. Shareware - Computer software that can be used and copied without charge. However, shareware is copyrighted and, if the copyright holder requests, a donation or fee must be paid if the software is used regularly.
8. Software - The entire set of programs, procedures and related documentation associated with a computer system/program.

D. PURCHASES, COPYRIGHT AND LICENSES

1. The purchase, lease, or license of all electronic communication system hardware and software must be approved by the City Administrator or her/his designee.
2. Copying of computer software owned by the City of Sun Valley shall be governed by the copyright agreement..
3. License agreements will be maintained by the City Administrator or her/his designee. The license agreement shall be the ultimate rule governing the use of the software. Any act permitted by this policy, but not permitted by the license agreement of the software program, shall be considered null and void.
4. Software registration must be completed for all software purchased by the City at the time of purchase and shall list the City of Sun Valley as the purchaser and list the City Administrator as the contact for inquiries as to the use of the product.

E. GENERAL REQUIREMENTS

1. The electronic communication system is to be used for City business purposes only.
2. Incidental personal use of the Internet is allowed from time-to-time during breaks, including the lunch hour, to check for email on a personal, non-City account(s).
3. All messages composed, sent, stored, copied or received via electronic communication systems are the property of the City. These messages are not private property of any employee, and no employee should have any



expectations of privacy in such messages. The City Administrator has the right to access, close and/or disclose all messages sent via an electronic communications system. Employees, therefore, should treat electronic communications with the same degree of propriety and professionalism as official correspondence.

4. The City Administrator shall regulate the requirements for City password usage. All employees shall change, alter, or modify their passwords as required by the City Administrator.
5. Confidential electronic files must be professionally erased or storage devices containing these files removed from any computer or hardware device prior to the computer or hardware device being removed from the agency for servicing, repairs, or replacement.
6. The City Administrator must be notified immediately when --
 - a. Sensitive information is or suspected of being lost or disclosed to unauthorized parties.
 - b. Unauthorized use of the electronic communications system has taken place, or is suspected of taking place.
 - c. Passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
 - d. Any unusual system behavior such as missing files, frequent system crashes, misrouted messages, and the like appear because it may indicate a computer virus infection or similar security problem.
7. It is the intent of the City to provide the tools that every employee needs to successfully complete assignments. Occasionally an employee is allowed to use his or her personal computer for City business subject to prior department head approval and the following conditions:
 - a. Any personal computer used for City business will be regulated by this policy as if it were a City purchased computer.
 - b. All document files, emails, and any other type of file created on a personally-owned computer that is being used for City business is subject to the Public Records Law, and the employee who owns the computer must make the computer and its contents available for inspection in accordance with that law at any time it is requested.
8. The City Administrator shall define the network server uses, organizational format, use of older/file protection, storage and other aspects of network capabilities. Employees have the responsibility to use the network server effectively in meeting these directions.



9. Electronic communications are subject to the provisions of Resolution 2006-05
- Records Retention.
10. An employee may indicate her/his affiliation with the City of Sun Valley in bulletin board discussions, chat sessions, and other offerings on the Internet. This may be done by explicitly adding certain words, or it may be implied. In such cases where the employee states her/his affiliation with the City, she/he must also clearly indicate the opinions expressed are her/his own and not necessarily those of the City of Sun Valley.
11. The use of electronic communication systems shall be in keeping with applicable Federal, State, local, civil and criminal laws.

F. UNAUTHORIZED ACTIVITIES

1. No personally owned software applications or shareware software may be installed on a City computer, including, but not limited to, games, entertainment software, and screen savers unless written permission is given by the City Administrator and it is allowed by the licensing agreement of the software.
2. No employee may tamper with, change, delete, reprogram, copy protected codes, enter into areas of the program reserved for programming, insert additional programming, or rename any computer software program purchased, leased, or licensed for use by the agency, unless it is authorized by the licensing agreement. No employee shall perform any repairs, installations, modifications, removal, or relocation of any computer hardware, peripherals, and associated components without first obtaining authorization by the City Administrator.
3. Electronic transfer of files, software, or programs purchased by the City is not authorized unless it is allowed by the licensing agreement of the software product.
4. Employees shall not use the email account or password assigned to another individual to send or receive messages unless authorized to do so by the owner of the email account.
5. The electronic communication system shall not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non job-related solicitations, or used for any personal commerce or purchases.
6. The electronic communication system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, or proprietary information. Failure to observe copyright or license agreements may result in disciplinary action and/or legal action by the copyright owner.



7. No employee shall utilize or cause any City-owned computer to utilize an automatic log-on. Employees are prohibited from leaving a City computer unattended while logged on.
8. The encryption of files and the use of encryption programs are not permitted on any City computer without the prior authorization of the City Administrator.
9. No employee shall bypass or modify any installed security systems or menu interfaces without the expressed permission of the City Administrator.
10. No employee shall knowingly introduce any computer virus into any part of the electronic communications system operated by the City. Employees must use due care and caution to avoid inadvertently introducing computer viruses into any City computer by any means. Any material received which is suspect, e.g. multiple copies of email with the same subject line information received in rapid succession, should not be opened.
11. Viewing, downloading, communicating and/or transmitting material (for other than law enforcement purposes) that is known to involve the use of obscene language, images, jokes, sexually explicit materials or messages that disparage any person, group, or classification of individuals is strictly prohibited. Any employee who uses the City's equipment or network for these purposes will be subject to an immediate, severe disciplinary response.
12. Employees shall not use photographs or other material depicting City logos, vehicles, etc. on any personal or privately-owned home page. Personal/private home pages shall be clearly identifiable as personal pages.
13. Electronic communication systems are for the exclusive and sole use of City employee and shall not be used at any time by family members, friends or other persons not employed by the City.



SECTION 4: JOB DESCRIPTIONS & SALARY PLAN

4.1 JOB DESCRIPTIONS

All Employee positions in the City will have a job description which will include but is not limited to the position title, statement of duties, required skills, knowledge and abilities, education and experience requirements. The job description will be developed by the Department Head and approved by the City Administrator. A review of each job description shall be conducted periodically by the City Administrator. The City Administrator may from time to time abolish certain job positions based upon the needs of the City.

4.2 FULL-TIME AND PART-TIME STATUS

The status of the position held with the City may affect the status of obligations or benefits associated with City employment. The procedures for hiring, promotion and transfer of full-time Employees shall be subject to the provisions of this Manual. Personnel actions concerning part-time or casual Employees are not subject to guidelines set forth herein unless the Manual's provisions expressly provide therefore. The primary groups of Employees and their respective status is outlined as follows:

A. FULL TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least 30 hours of scheduled work during a seven (7) calendar day period. Full-time regular Employees shall receive all Employee benefits provided by the City as such benefits now exist or may be subsequently changed.
2. Police Officer Idaho Post Certification: Any police officer obtaining an Idaho post certification shall be eligible for a regular employment status.
3. The Police Department has selected a full time employment scheduling period of fourteen (14) days as allowed by FLSA. This scheduling may be changed by the Police Chief with the approval of the City Administrator.

B. PART TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least twenty (20) hours, but not as much as thirty (30) hours, of scheduled work during a seven (7) calendar day period. Part-time regular Employees shall receive reduced Employee benefits in accordance with policies adopted by the Council. The scope of benefits received may vary proportionately with the number of hours typically scheduled for a part-time regular Employee. The number of hours scheduled may also affect the Employee's obligation to participate in certain mandatory state benefit programs. Certain benefits may not be available.



4.3 SEASONAL & TEMPORARY EMPLOYEES

This Section sets forth policies governing the City's use of temporary and seasonal Employees, and volunteers. Except as specifically provided within this Section, volunteers and seasonal Employees do not have any rights as regular full or part-time Employees.

- A. Seasonal and Temporary Employees may be employed on an as-needed basis by the City, not to exceed 1,000 hours per fiscal year (October 1 through September 30). Within budgetary constraints, the City Administrator will have the authority to appoint temporary and seasonal Employees.
- B. The City Administrator will determine the appropriate hourly rate of pay and benefits, if any. All Seasonal and Temporary Employees will be retained with a written Letter of Employment.

4.4 VOLUNTEERS

Volunteers may be utilized by the City in any capacity that is deemed suitable by the City Administrator. The number of volunteers being utilized by the City at any one time may vary by programmatic needs and the availability of volunteers available with specialized skills or abilities which may be needed.

Upon the initiation of the volunteer relationship, the volunteer shall sign a "Volunteer Waiver Form." Volunteers shall submit a monthly log detailing the number of hours contributed to the City. The City will utilize volunteers to provide fire suppression services.

The City shall provide coverage for all volunteers under the State workers' compensation system as required by law. The City Administrator will determine the amount of hourly pay and conditions for such pay and/or benefits, if any.

4.5 EXEMPT EMPLOYEES

The City Administrator is authorized to evaluate each job position as necessary to determine whether it shall be "exempt" from certain work provisions as defined in the Fair Labor Standards Act (FLSA). The following positions have been determined to be "exempt": City Administrator, Police Chief, Fire Chief, Assistant Fire Chief, Director of Community Development, Street Superintendent, City Clerk, Finance Manager/City Treasurer and the Building Official.



4.6 SALARY PLAN

A. POLICY

The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan.

The Salary Plan shall include all job positions in the City except the City Administrator and City Attorney and shall set forth salary ranges for those positions. The City Administrator shall have the responsibility to develop and maintain the Salary Plan. The Salary Plan will establish minimum and maximum salaries for each job position, with the exception of the City Administrator and City Attorney. The Salary Plan will be presented to the Mayor and City Council for adoption. Every third year, commencing in April 2010, the City Administrator will update the Salary Plan for regional market changes to ensure job positions are competitive. (Amended by Resolution 2007-06)

B. SALARY PLAN ADMINISTRATION

The Salary Plan shall be implemented and administered by the City Administrator who shall determine the rate of pay for each Employee. Movement in the Salary Plan is not automatic. The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds.

In order to properly compensate Employees, salary determinations shall be based upon the following:

1. New Employees: The job qualifications, experience and education of the new Employee will be evaluated in determining a new Employee's starting salary within the Salary Plan.
2. Merit Increases: In order to properly compensate Employees, adjustments in salary shall be based on a merit pay system. Adjustments will not be automatic, but shall depend upon achieving an "above standard" rating or "outstanding" rating on an annual performance evaluation or a six month probationary performance evaluation. Salary adjustments for those Employees achieving a rating worthy of merit increase consideration shall fall within the salary plan range for that position, unless approved otherwise by the City Administrator.
3. Employee Changes In Status:
 - a. Promotions: An Employee who is promoted to a higher classification shall be placed in the higher salary range and will receive an increase not to exceed the maximum rate in the new range. When promoted, an Employee will retain his/her original



hire date for purposes of calculating annual benefits, but the date of promotion will be used for purposes of performance evaluations and merit consideration.

- b. Voluntary Demotion: An Employee who voluntarily is demoted shall be placed in the new job position salary range, at a step as close as possible to his/her previous step and range. However, his/her salary shall not exceed the maximum rate for the new, lower salary range.
- c. Involuntary Demotion: An Employee who is involuntarily demoted as a result of disciplinary action may be placed in a new job position range and his/her salary reduced.
- d. Transfers: An Employee who transfers laterally to a classification with the same salary range shall retain his/her present salary placement.
- e. Employees who have reached Step 9 of their position's Salary Plan: Upon receiving an excellent performance evaluation, an employee who as reached Step 9 of their position's Salary Plan may be eligible for a 2.5% pay increase.

4.7 PAY PERIODS

The City operates on a biweekly pay period which shall commence on Monday and continue through the following second Sunday (two weeks). Employees shall receive pay for the prior two week pay period by 5 p.m. the following Thursday. If the Thursday is a holiday, the pay date will be the first business day preceding the holiday. The manner of distribution of paychecks will be determined by the City Administrator.

4.8 OVERTIME PAY

A. OVERTIME PAY FOR NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act (FLSA) stipulates that overtime compensation shall be paid to non-exempt Employees. All overtime must be authorized by the Supervisor in advance. Overtime pay will be administered as follows:

1. The Police Department work period shall be fourteen (14) days as allowed under FLSA. Overtime for nonexempt Employees will begin to accrue after eighty hour of work within the work period. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.
2. All other nonexempt Employees shall be entitled to overtime pay for work performed in excess of forty (40) hours per week. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.



3. The Employee may request to be granted compensatory time off without pay in lieu of receiving overtime pay consistent with the applicable FLSA regulations. This request must be made each time overtime hours are worked. The request should be directed to the Department Head, who may grant the request if time off would not pose a disruption of operations and the delivery of services. Compensatory time off will be at the rate of one and one-half hours off for each hour of overtime worked.
4. Compensatory time accrual will not exceed 40 hours for any Employee.

B. EXEMPT EMPLOYEE OVERTIME

It is anticipated that exempt Employees will work more than 2080 hours per year. Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so. Exempt Employees are not eligible for overtime compensation.



SECTION 5: BENEFITS

5.1 HOLIDAYS

The following eleven (11) holidays are observed: employee's birthday or anniversary, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, and New Year's Day.

Holidays which fall on a Saturday are taken on Friday; those which fall on a Sunday are taken on a Monday.

Police Officers are scheduled into eighty (80) hour rotations either for work or for a day off over fifty-two (52) weeks. Officers who have a regular scheduled day off on a holiday shall be provided eight hours of compensatory time off. Officers who are scheduled to work on a holiday will be compensated with one (1) hour of compensatory time off for each hour worked on the holiday.

Any other Employee who is called into work during a designated holiday, in addition to being paid for the holiday, shall be paid time and one-half for each hour worked on the holiday. Compensation shall be either cash or compensatory time off, at the discretion of the Department Head.

5.2 VACATION LEAVE

- A. The purpose of vacation leave is to allow the Employee extended rest and rejuvenation. Regular full-time Employees shall be provided annual vacation leave according to the following schedule:

<u>Years of Employment</u>	<u>Vacation Days</u>
Year 1	10
Years 2-7	15
Years 8+	20

- B. Regular part-time Employees shall be provided vacation leave according to the above formula in proportion to hours actually worked in a typical 40 hour work week.
- C. The following provisions apply to vacation leave:
1. Employees are required to take a minimum of 80 hours of vacation per year, unless approved otherwise by the Employee's Supervisor. Employees may begin taking accrued vacation time after six (6) months of employment.
 2. Employees may accrue a maximum of one hundred (100) hours of vacation. When the Employee has accrued one hundred (100) hours of vacation leave,



the Employee will cease accruing vacation leave until his/her accrual balance falls below one hundred (100) hours. (Amended by Resolution 2007.06)

3. Vacation Leave Conversion: With the approval of the Employee's Supervisor and the City Administrator, up to forty (40) hours of vacation leave may be converted to cash payment at the Employee's straight time rate each calendar year only if the Employee has used an equal amount of vacation leave in the previous 12 month period; for administrative purposes, no more than two (2) requests for conversion during the calendar year will be allowed, and any hours of vacation leave counted in the first request for that year may not be counted in the second.
4. Paid holidays which occur during vacation leave will not be charged to vacation time.
5. Vacation must be scheduled and approved in advance with the respective Department Head, in order to ensure continued operation of City services.

5.3 SABBATICAL LEAVE

- A. The purpose of the sabbatical is to allow the Employee extended paid time off from work to pursue a personal or professional interest, including rest and relaxation.
- B. Employees will be entitled to fifteen (15) days of paid sabbatical leave after completion of the first three years of employment and every four (4) years of employment thereafter. The following provisions apply to sabbatical leave:
 1. The fifteen (15) days leave must be taken in the first year following each three year anniversary date or be forfeited, i.e., years 4, 8, 12, etc.
 2. There is no conversion of the sabbatical leave to cash payment at anytime including upon leaving the employment of the City prior to or during a sabbatical year. The sabbatical leave may be combined with other additional accrued vacation, if approved by the Supervisor. The sabbatical leave dates must be scheduled in consultation and with the approval of the Supervisor. It is expected that the fifteen (15) days of sabbatical leave will be taken as a single block of time off.

5.4 SICK LEAVE

Sick leave shall be a benefit to all regular full-time Employees as an assurance against a loss of income during the Employee's illness, injury, or disability when the Employee is unable to fulfill his/her job duties. Employees may also take sick leave to care for a member of the immediate family, including children, spouses and parents. Sick leave shall accrue at the rate of one day per month.



Sick Leave Accrual: Employees may accrue a maximum of 720 hours of sick leave. Sick time accruals are forfeited at the time of employment termination and there is no cash equivalent payment provided by the City.

Physician's Statement: The City may request a Physician's Statement for absences of more than three (3) days.

Duplication of benefits: Sick leave benefits are not to be drawn during such time as the Employee is drawing unemployment, workers' compensation, disability insurance, or any other similar benefits or payments, either from the City or from any other source except for personal, non-City related insurance benefits.

5.5 MEDICAL INSURANCE

The City provides to each Employee and his/her dependents a medical health insurance policy, which includes but is not limited to health and dental insurance. Due to the changing nature of medical insurance and the associated premiums, the current Medical Insurance Plan of the City will be on file with the Finance Manager/City Treasurer. Appendix A summarizes the current benefits and will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.6 FAMILY CARE AND MEDICAL LEAVE POLICY

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible Employees as required by federal and state law. Appendix B sets forth certain rights and obligations with respect to the Federal Family and Medical Leave Act of 1993 (FMLA).

5.7 LIFE INSURANCE

The City may provide each Employee a Life Insurance Policy. Appendix C summarizes any current benefit. The Appendix will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.8 WORKERS' COMPENSATION INSURANCE

All Employees are covered by workers' compensation insurance in accordance with state and federal law. An Employee who suffers a work related illness or injury should check with the City Administrator's office for further information.

5.9 STATE UNEMPLOYMENT INSURANCE, SOCIAL SECURITY BENEFITS AND PERSI

All Employees of the City are covered by these benefits in accordance with state and federal law. In addition, all regular Employees are covered by the Public Employees' Retirement System of Idaho (PERSI). Contributions are made by both the City and the Employee.



5.10 SECTION 457 DEFERRED COMPENSATION

All regular full-time Employees and regular part-time Employees who work more than thirty (30) hours per week are eligible to participate in the City's optional deferred compensation plan. This plan, governed by IRS (Section 457) and state law, provides for the Employee to defer a portion of his/her income before taxes through payroll deduction, and provides for a variety of investment options.

5.11 SPECIAL LEAVE

A. PROFESSIONAL DEVELOPMENT AND EDUCATIONAL

The City encourages and supports the continuing education and training of Employees. Job related training or education shall be approved in advance by the Employee's direct Supervisor, in consultation with the City Administrator, and shall include tuition, materials, and books. It shall be reimbursed to the Employee upon evidence of a passing grade. The approval of educational reimbursement is not automatic; it is a discretionary benefit. The intent of the educational reimbursement policy is to cover the cost of individual classes only, on an infrequent basis. This policy is not intended to cover the costs associated with the pursuit of associate, undergraduate, graduate, or professional degree programs. Educational reimbursement, per this section, is academic in nature and is distinct from job related training, workshops, seminars, classes and/or conferences.

B. MILITARY LEAVE

An Employee who is a member of the National Guard, or is in a reserve component of the Armed Forces of the United States, or of the Public Health Services, shall be entitled to a leave of absence from City service for a period not exceeding 15 calendar days in any one (1) calendar year period. Such leave shall be granted without loss of time, pay, or other benefits to which the Employee is entitled. When an Employee receives bona fide orders to temporary active or training duty, such military leave longer than 15 days in any calendar year shall be granted without City pay.

C. BEREAVEMENT LEAVE

Bereavement leave of three (3) days is authorized in case of a death in the immediate family. Immediate family is defined as spouse, child, parent, parent-in-law, brother or sister.

D. COURT APPEARANCE

Any Employee required to appear in court or before the Grand Jury as a juror, witness in a criminal case, or witness in a civil case for the purpose of giving testimony shall



receive full compensation as though he were actually on the job during such time. He/she shall claim any witness or other fee to which he/she may be entitled by reason of such appearance and pay the same over to the City Treasurer to be deposited in the general fund.

E. LEAVE OF ABSENCE WITHOUT PAY

City Employees may apply for a leave of absence without pay for illnesses not otherwise covered by the City's family/medical leave policy, emergencies, or other compelling reasons. The City Administrator will review the request and determine whether to approve the leave. All applicable leave balances (i.e., sick, vacation, compensatory) must be exhausted before the leave without pay begins.

1. Reinstatement: Except for a leave of absence without pay of less than 90 days duration, the Employee's position will not be held open. For leaves beyond 90 days duration, the Employee must apply for reinstatement and will then be reinstated into the first available position of a similar classification and pay as the position vacated.
2. Benefit accruals: No vacation, sick leave, retirement, or other benefits will be paid or accrued during periods of leave without pay.



SECTION 6: EMPLOYEE EVALUATION

6.1 EVALUATION PROCEDURES

A. STANDARD PROCEDURES

Full-time Employees shall receive a job performance evaluation at six months service and thirty (30) days prior to one year of service. Thereafter, performance evaluations shall be conducted annually at the Employee's anniversary date. With the approval of the City Administrator, the dates of performance evaluations may be extended when 1) the Employee's performance needs improvement, and the Supervisor, with the concurrence of the City Administrator, determines that it is in the best interest of the City and the Employee to grant an extension to allow for improvement; 2) the Employee is on a leave of absence without pay for more than 30 days; and 3) when circumstances indicate that the Employee has not had adequate time to demonstrate suitability for regular status or continued employment.

Each Employee will be evaluated to assess the performance of that Employee in the job being performed for the City. Each evaluation will be given on the basis of the direct Supervisor's observations of the Employee's performance, the accuracy of the Employee's work in addition to the quantity and quality of the work. Each Supervisor will seek the input of other City personnel and input, where appropriate, from others outside of the City workforce who have an on-going knowledge of the Employee's work.

1. The City Administrator shall provide to each Supervisor an appropriate Employee Appraisal Form.
2. The Supervisor shall perform the following:
 - a. Review the Employee's job description;
 - b. Review Employee's Goals from the previous appraisal period.
 - c. Complete the Employee Performance Appraisal Form
3. The Employee will also complete a self-evaluation on the Employee Performance Appraisal Form.

B. EVALUATION

Each evaluation shall conclude with a meeting between the evaluated Employee and the immediate Supervisor in which the Employee will be provided with the written evaluation prepared by the Supervisor. The Employee will be given an opportunity to respond to the evaluation. The Supervisor will establish performance goals for the Employee for the next year and detail any work improvements or continuing professional development needs of the Employee.



6.2 APPEAL

Any Employee shall have the right to appeal his/her performance evaluation to the City Administrator by submitting his/her concerns in writing. The City Administrator shall meet with the Employee to discuss the Employee's concerns. The City Administrator shall issue a written finding, either upholding the Employee's performance evaluation, or returning it to the Supervisor for changes or revision. Any written materials from this process shall become part of the Employee's personnel file. The City Administrator's written finding shall be final and there shall be no further right of appeal.



SECTION 7: STANDARDS OF CONDUCT

7.1 PURPOSE

This policy shall assure that all Employees are aware of important policies, procedures and regulations governing their employment with the City. In addition, the City expects that this policy shall ensure that Employees at all times conduct themselves in a manner that reflects favorably on the City and builds and supports the integrity and credibility of the City organization. Violation of any of the policies included in this Section may be grounds for disciplinary action, up to and including termination of employment, depending upon the severity of the violation.

7.2 SAFETY POLICY

Safety and health is the primary concern and responsibility of every Employee working for the City. The City recognizes its obligation to provide adequate safety equipment, to train Employees in safe operations and practices, and to establish and enforce safety regulations.

All Employees are obligated to perform their assigned duties safely by following established safe work procedures, using the proper safety equipment, and by reporting or correcting unsafe acts or workplace conditions.

7.3 CONFLICT OF INTEREST

City Employees are expressly prohibited from engaging in any activities which could represent a conflict of interest with their City employment.

It is the responsibility of the Employee to notify his/her Department Head when the Employee's circumstances or work assignment change and create a situation wherein a conflict of interest may arise. The Department Head will notify the City Administrator in writing of the potential conflict. The City Administrator, in consultation with the City Attorney, shall make recommendation to the Mayor and Council as to what action should be taken to avoid the potential conflict of interest.

7.4 CONFIDENTIALITY OF RECORDS

Employees having access to confidential records such as personnel actions, medical records, payroll records, etc., shall maintain strict confidentiality of such records. City records may only be released or disseminated by the Mayor, City Administrator or City Clerk in accordance with the public records laws of the State of Idaho.

7.5 HARASSMENT POLICY

The purpose of this policy is to set forth the City's position prohibiting harassment by or against any of its Employees or applicants. The City's harassment policy is in keeping with the City's commitment to provide a work environment that is free of discrimination. The City prohibits



harassment in any form, including verbal, physical and visual harassment.

- A. Sexual harassment includes, but is not limited to, making unsolicited and unwelcome sexual advances, requests for sexual favors and/or other verbal, physical, or visual conduct of a sexual nature which occurs under the following circumstances:
 - 1. Submission to such conduct is explicitly or implicitly made a term or condition of employment; or
 - 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the Employee or applicant; or
 - 3. Such conduct has the purpose or effect of substantially interfering with the individual's performance and/or creating an intimidating, hostile or offensive work environment.
- B. Racial or ethnic harassment includes, but is not limited to, ethnic slurs, jokes or other verbal or physical conduct relating to an individual's race, national origin, or ancestry where such conduct:
 - 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
 - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - 3. Otherwise adversely affects an individual's employment opportunities.
- C. Also similarly prohibited is any form of harassment against a person because of that person's religious creed, physical handicap, medical condition, sexual orientation, marital status or age.

Guidelines:

- A. An Employee who believes that he or she has been harassed by a co-worker, Supervisor, any City official, or individual outside of the City organization, should immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.
- B. If the complaint is against the Employee's Department Head, the Employee should report it directly to the City Administrator. If the complaint is against the City Administrator, or a member of the City Council, the Employee should report the complaint to the Mayor. If the complaint is against the Mayor, the Employee should report it to the President of the Council.
- C. A Supervisor or Department Head who is notified of a complaint or otherwise becomes aware of a violation of this policy must immediately notify the City Administrator. Failure to do so may result in disciplinary action up to and including termination.
- D. Once an incident has been brought to the attention of management, an investigation will be conducted by the City Administrator's office or other person designated by the City Administrator or the City Council to determine all the facts surrounding the



incident including, but not limited to, the totality of the circumstances, the nature of the conduct, and the context in which the alleged incident occurred. The City has the right to retain an independent third party to conduct the investigation.

- E. If the complaint is against a patron of City services, the City will take those steps within its power to investigate and eliminate the problem.
- F. If a violation of this policy is found to have occurred, the Employee who is found to have violated this policy will be subject to discipline, up to and including termination.
- G. Retaliation: Retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited. Employees found to be retaliating against another Employee shall be subject to disciplinary action, up to and including termination.

7.6 SUBSTANCE ABUSE

The City maintains a "zero-tolerance" policy toward the use or possession of illegal substances and toward an Employee being impaired or incapacitated by alcohol or any other controlled substance.

The unauthorized possession, consumption, transfer or sale of any illegal drug shall be grounds for immediate disciplinary action.

An Employee may not, under any circumstances, report to work impaired by or under the influence of alcohol or any illegal or controlled substance. Any Employee who does report to work under the influence of alcohol or any illegal or controlled drug will be relieved of duty and subject to disciplinary action.

7.7 OUTSIDE EMPLOYMENT

The City Administrator shall have the authority to limit outside employment activities of City Employees when in his/her judgment that employment would create a potential conflict of interest, a potential breach of confidentiality on substantive matters of City business, or would have the potential to detrimentally affect the Employee's ability to perform for the City. Prior to engaging in outside employment, City Employees must submit a written request to the City Administrator who shall approve or deny the request within five working days.

7.8 PROPRIETARY RIGHTS

Any and all work products including software design, reports, and research analysis completed by City Employees while in the employ of the City are deemed to be the property of the City. No Employee may sell, copy, or otherwise use such information for outside economic gain without the express written consent of the City.



7.9 DRESS AND PERSONAL GROOMING

Employees shall at all times dress in a manner which reflects a professional image of the City. Clothing should reflect commonly accepted office standards and Employees should be well groomed at all times. Items including, but not limited to: halter tops, "spaghetti straps," extremely short shorts, spandex shorts, or worn or soiled jeans are neither appropriate nor acceptable during working hours. Employees in violation of this policy will be required to leave the premises and return in appropriate attire, and time taken to comply with this requirement will be at the Employee's own expense.

7.10 SMOKE-FREE WORK ENVIRONMENT

It is the policy of the City to create and maintain a safe and healthful work environment. Therefore, the City is a smoke-free workplace. Consistent with this policy, all City buildings and vehicles are designated no-smoking areas. Employees desiring to smoke may do so in offsite locations during their normal lunch or break periods.

7.11 GRATUITIES

No Employee shall accept any fee, gift, or other valuable item in the course of performing the duties of his/her position. Employees may accept such items as candy, cake, cookies, or other items of nominal value which are intended to be appreciative in nature and which are made available for general office consumption or use. Meal expenses related to the conduct of City business are exempt from this policy if approved in advance by the Department Head.



SECTION 8: DISCIPLINE

8.1 POLICY AND PURPOSE

The purpose of this policy is to establish a disciplinary system to assure a fair and consistent procedure for the prevention and correction of Employee performance deficiencies. It is the policy of the City to promote a positive discipline process wherein the objective is to assist the Employee to succeed in his/her responsibilities whenever possible.

8.2 SUPERVISORY RESPONSIBILITY

It is the responsibility of each Supervisor to identify, evaluate, and institute measures to correct performance deficiencies. Supervisors are expected to utilize the following strategies:

1. Communicate and explain the City's expectations and performance standards.
2. Communicate and explain the City's disciplinary policies.
3. Provide Employee training, recognition, and feedback on performance standards.
4. Conduct periodic performance reviews and appraisals.

8.3 APPLICABILITY

This policy shall apply to all regular full-time and regular part-time Employees. It shall not apply to the City Administrator, City Clerk, City Treasurer, City Attorney, or any seasonal or temporary Employees, paid call firefighters or volunteers.

8.4 CAUSES FOR DISCIPLINARY ACTION

Any action or inaction which is a hindrance to the effective performance of City operations, or reflects discredit upon the City or its Employees, will be considered just cause for disciplinary action. Disciplinary action may be taken for (but is not limited to) the following actions:

1. Violation of any City policy, rule, or regulation, contained in these Personnel Policies or in any other City communication of general distribution.
2. Violation of the Drug-Free Workplace Policy.
3. Violation of lawful duty.
4. Insubordination, including refusal to obey a reasonable order and promoting work unit insubordination.
5. Absence from the workplace without prior authorization (unexcused or excessive absenteeism).
6. Habitual tardiness or absences.
7. Abuse of sick leave benefits.
8. Failure to perform assigned work in an efficient and acceptable manner.
9. Abusive language or conduct toward the public or fellow Employees, or other conduct unbecoming a City Employee, including disrespect toward Supervisory or other authority, disorderly conduct, disregard or neglect of duties, abuse of



- authority over other Employees, or on or off-duty conduct which may bring discredit to the City.
10. Being wasteful of City materials, property, or time.
 11. Unacceptable interpersonal skills, to the extent that the workplace environment is below standard.
 12. Conviction of a work related felony.
 13. Use of religious, political, or fraternal influence for personal gain.
 14. Theft.
 15. Personal acceptance of a fee, gift, or other valuable item in the course of the employee's work for the City.
 16. Release of confidential information.
 17. Falsification of forms, records, or reports, including but not limited to time cards or job applications.
 18. Participating in unlawful harassment toward any member of the City staff or the public, including but not limited to sexual or racial harassment.
 19. Violation of safety laws, regulations, or guidelines.
 20. Use of position, City property, or confidential City information for personal gain; or for the gain of others.

8.5 FORMS OF DISCIPLINARY ACTION

Disciplinary action may take any of the following forms, in any order, depending upon the seriousness of the infraction, the Employee's previous work history and longevity, and other relevant factors. Progressive discipline shall be applied only where the Supervisor believes that the potential for improvement and curative behavior is possible.

- A. Oral reprimand: An oral reprimand is a warning rather than a punitive action, and is designed to prevent the Employee from being placed in a position where formal discipline must be used. A Supervisor may make a brief note documenting the conversation and will retain the note for future reference. Documentation of an oral reprimand will not be placed in the Employee's personnel file.
- B. Written reprimand: A written reprimand is also intended to be a warning procedure; however, the written reprimand also serves to place the Employee on official notice that future abuse will result in a more severe form of disciplinary action. As such, the written reprimand will be placed in the Employee's personnel file.
- C. Suspension without pay: Suspension without pay is a form of discipline which is usually taken either after a written reprimand has failed to correct the performance deficiency or when the severity of the violation is such that it warrants a suspension without pay.
- D. Disciplinary probation: Disciplinary probation is a form of discipline which is usually taken when a written reprimand or suspension without pay have failed to correct the performance deficiency or when the severity of the violation is such that it warrants it. Disciplinary probation consists of placing an Employee back on



probationary status. The Employee loses regular status, and must bring his/her performance up to a "Standard" rating in order to regain regular Employee status.

- E. Salary reduction: A reduction in salary is the reduction of the Employee's salary to a lower step on the salary range to which his/her position is assigned. This form of discipline may be used for any length of time that the City Administrator deems appropriate, and is generally but not exclusively used when it is advantageous to have the Employee on the job but the seriousness of the violation or performance problem warrants more disciplinary action than a written reprimand.
- F. Involuntary demotion: A demotion to a lower classification may be used as a form of disciplinary action, when dismissal is not warranted, or when the Supervisor feels that the Employee has the potential for correcting the misconduct. When demotion to a lower classification occurs, the salary of the Employee will be equal to, or less than, the Employee's present salary, at the discretion of the Supervisor and City Administrator.
- G. Dismissal: Dismissal from City service may be necessary after other attempts to correct the performance deficiencies have failed or when the seriousness of the infraction is such that dismissal is warranted.

8.6 ADMINISTRATION OF DISCIPLINE

The following is a list of positions with the authority to impose discipline

- 1. The Employee's Supervisor may administer an oral reprimand and a written reprimand and recommend other levels of discipline.
- 2. Consistent with 8.7 below, the City Administrator will review and approve all recommendations for suspensions without pay, disciplinary probations, reductions in salary, involuntary demotions, and dismissals from City service.

8.7 INFORMAL REVIEW

A regular, full-time Employee shall have the right to an Informal Review regarding disciplinary actions consisting of suspension without pay, disciplinary probation, salary reduction, involuntary demotion, or dismissal from City employment within 5 working days after receiving notification of the proposed disciplinary action.

The following steps shall be followed in submitting and processing a request for an Informal Review. For purposes of this Informal Review process, the City Administrator shall be deemed to be the Department Head for all Employees. The Chief of Police shall be deemed to be the Department Head for the Police Department; the Fire Chief shall be deemed the Department Head for the Fire Department; and the Community Development Director shall be deemed the Department Head for the Community Development Department.



- Step 1: In disciplinary actions imposed by the Department Heads, the affected Employee may submit a request for an Informal Review of the disciplinary action to the City Administrator within five (5) working days after receiving notification of the proposed disciplinary action. The Department Head shall review the Employee's request for an Informal Review and provide to the City Administrator any and all relevant information regarding the proposed disciplinary action within three (3) days after notification of the Employee's request for an Informal Review.
- Step 2: The City Administrator shall meet with the affected Employee and the Department Head to review the reasons for the proposed disciplinary action and any relevant information the Employee desires to submit in connection with the disciplinary action or the information and/or events upon which the proposed disciplinary action is based.
- Step 3: Upon the conclusion of the Informal Review, the City Administrator shall prepare his decision in writing upholding, modifying, or rescinding the proposed disciplinary action.
- Step 4: If the affected Employee is dissatisfied with the decision of the City Administrator, then the Employee may request that the City Administrator's decision be informally reviewed by the Mayor within five (5) working days after receiving the City Administrator's decision. The Mayor shall meet with the City Administrator and the Employee, review the Employee's written material and relevant information regarding the proposed disciplinary action and provide his written decision within three (3) days after the meeting. The decision of the Mayor shall be final and binding.

In the event of disciplinary action proposed by the City Administrator acting in the capacity of the Department Head, such proposed disciplinary action shall be reviewed directly by the Mayor consistent with Step 4, above. The decision of the Mayor shall be final and binding.

If the request for an Informal Review is not initiated within the time limits established by this Section, then the right for an Informal Review shall be deemed to be waived. Any disciplinary action not taken to the next step of the Informal Review procedure within the time limits established by this Section shall be considered settled on the basis of the last decision made.

The time limits prescribed in this Section for the initiation and completion of the steps of the Informal Review procedure may be extended for a reasonable amount of time by the reviewing City Employee.



APPENDIX A

MEDICAL INSURANCE PLAN

CITY STAFF HEALTH REIMBURSEMENT ARRANGEMENT ANNUAL ROLLOVER AND PORTABILITY POLICY

Regence BlueShield of Idaho has been selected by the City of Sun Valley to provide health insurance for its full-time regular employees (at least thirty (30) hours or more per week). The Health insurance plan includes a Health Reimbursement Arrangement (HRA) program. Individual employee HRA accounts are established and annually the city appropriates funds to the HRA account to help pay for employee deductibles.

It is the City's policy that at the end of each fiscal year, any unused appropriation funds in an individual's HRA account may be rolled over into the next fiscal year. The maximum amount that may be rolled over each year is seventy percent (70%) of the remaining funds. The funds may be used in subsequent years for medical costs as authorized by Regence BlueShield.

Vesting of rollover funds occurs at the completion of three (3) years of full-time employment. Rollover funds will at that time become available as a profitability payment to an employee should the employee leave City employment. After year three (3), an employee, upon employment termination, will be provided a payment of up to \$1,500 of any vested rollover funds. At the end of five (5) or more years of employment, an employee will be entitled to payment of up to \$5,000 of any vested rollover funds.

An employee receiving a profitability payment may choose to either have the payment made as income and, therefore, subject to all applicable payroll taxes and payroll benefits or the employee may select that a payment or payments be made directly for another health insurance plan.

MAYOR & COUNCIL HRA PROGRAM

The Mayor and Council are full-time employees of the City and are eligible to receive health insurance benefits equal to those provided to other employees. In addition, the Mayor & Council may select to provide for their health insurance coverage through an existing health insurance program of their own or through a spouse's health insurance program. If one of these options is selected, the Mayor and/or Councilperson(s) may still participate in the City's Health Reimbursement Arrangement (HRA) program as follows:¹

¹The Mayor and Council are considered a unique class under this policy and, therefore, other employees are not eligible for this HRA Program.



1. The City will establish an individual HRA account for the Mayor and/or Councilperson and contribute \$1,217.40 per month to the account. The maximum total contribution over a twelve month period is \$14,608.80 and the ²period of time will be from January 1 through December 31²
2. The HRA account may be used by the Mayor and/or Councilperson(s) for the reimbursement of their health insurance premiums and/or deductibles including all dependents on the program.
3. The Mayor and/or Councilperson(s) must present to ISC, the City's HRA account managers, acceptable proof of health insurance premium payment in order to be reimbursed (i.e. payroll documentation or premium invoice).
4. The Mayor and/or Councilperson(s) must present to ISC acceptable proof of deductible payment in order to be reimbursed (i.e. doctor's receipt or Explanation of Benefits (EOB) from health insurance provider.)
5. ISC will be responsible for verifying receipts and payroll deduction documentation and will make timely reimbursements for all eligible health insurance premium costs and deductibles, and deductibles.

² The monthly and maximum annual City Contribution to the HRA accounts is calculated based upon the current per employee and dependent *premium costs* charged by Regence BlueShield of Idaho (Health Insurance) and MetLife (Dental Insurance) for City employees and the City's share of paid deductibles in the current 2004/05 health insurance policy.

Dental	Health
	Employee: \$ 263.00/month
\$ 25.80	Spouse: \$ 316.00/month
\$ 23.70	Children: \$ 354.00/month (or \$118/month/child up to 3 children) \$ 30.00
Total per month:	\$ 933.00
\$ 84.40 (family)	
\$1,012.80	Total per year: \$ 11,196.00
Plus: City Deductible Payment:	\$ 2,400.00
Total Annual HRA Account Contribution:	\$ 14, 608.80
Total Monthly HRA Account Contribution:	\$ 1,217.40



6. The maximum total reimbursement for the twelve-month HRA period is \$14,608.80.
7. At the end of the twelve-month period, or at anytime that the elected term of the Mayor and/or Councilperson(s) should end, any remaining funds in the Mayor's or Councilperson(s) HRA account will revert back to the City and will be forfeited by the Mayor and/or Councilperson(s) if they do not have outstanding receipts to withdraw those funds. There is no rollover provision provided in this program.



APPENDIX B

FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Rights and obligations, which are not specifically set forth below, are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA.

A. Definitions

1. "12-month period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
An Employee's child is one for whom the Employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or stepchild.
3. A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
4. "Parent" means the biological parent or an Employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an Employee when the Employee was a child. This term does not include parents-in-law.
5. "Spouse" means a husband or wife as defined or recognized under Idaho State law for purposes of marriage.
6. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
 - b. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:



- i) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
- ii) Treatment two or more times by a health care provider, by a nurse or physicians assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral, by a health care provider; or
- iii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

Any period of incapacity due to pregnancy or for prenatal care.

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- i) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The Employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

7. "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or



surgery by the State of Idaho;

- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of Manual manipulation of the spine to correct a subluxation as demonstrated by X-rays to exist) authorized to practice in Idaho and performing within the scope of their practice as defined under State law;
- 2) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- 3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 4) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

B. Reasons for Leave

Leave is only permitted for the following reasons:

- 1) The birth of a child or to care for a newborn of an Employee;
- 2) The placement of a child with an Employee in connection with the adoption or foster care of a child;
- 3) Leave to care for a child, parent, or a spouse who has a serious health condition; or
- 4) Leave because of a serious health condition that makes the Employee unable to perform the functions of his/her position.

C. Employee's Rights to Leave:

An Employee is eligible for leave if the Employee:

- 1) Has been employed for at least 12 months; and
- 2) Has been employed for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave.



D. Amount of Leave:

Eligible Employees are entitled to a total of 12 workweeks of leave during any 12-month period.

E. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the Employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an Employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions. If leave is requested to care for a child, parent, spouse or the Employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

1. Spouses Both Employed by the City

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12 month period if leave is taken for the birth or placement for adoption or foster care of the Employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

F. Employee Benefits While on Leave:

Leave under this policy is unpaid; however, the Employee may use sick, vacation, and/or compensatory time as determined by the City. While on leave, Employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the Employee is on the job.

If an Employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire period, unless the Employee does not return because of the continuation, recurrence, or onset of a serious health condition of the Employee or his/her family member which would entitle the Employee to a leave, or because of circumstances beyond the Employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid, wages, vacation pay, etc.).

G. Substitution of Paid Accrued Leaves:

While on leave under this policy, as set forth herein, an Employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an Employee to concurrently use paid accrued leave after requesting FMLA leave, and may also require



an Employee to use Family and Medical Care Leave concurrently with a non-FMLA leave which is FMLA qualifying.

1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave: Where an Employee has earned or accrued paid vacation, administrative leave, compensatory time, or sick leave, that paid leave may be substituted for all or part of any otherwise unpaid leave under this policy.
2. As for sick leave, an Employee is entitled to use sick leave concurrently with leave under this policy if:
 - a) The leave is for the Employee's own serious health condition; or
 - b) The leave is needed to care for a parent, spouse, or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.
3. The City's Right to Require an Employee to Use Paid Leave When Using FMLA Leave: Employees must exhaust their accrued leaves concurrently with FMLA leave to the same extent that Employees have the right to use their accrued leaves concurrently with FMLA leave, with two exceptions:
 - a) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
 - b) Employees will only be required to use sick leave concurrently with FMLA leave if the leave is for the Employee's own serious health condition.
4. The City's Right to Require an Employee to Exhaust FMLA Leave Concurrently With Other Leaves: If an Employee takes a leave of absence for any reason which is FMLA qualifying, the City may designate that non-FMLA leave as running concurrently with the Employee's 12-week FMLA leave entitlement.
5. City's and Employee's Rights If an Employee Requests Accrued Leave Without Mentioning the FMLA: If an Employee requests to utilize accrued vacation leave or other accrued time off without reference to a FMLA qualifying purpose, the City may not ask the Employee if the leave is for a FMLA qualifying purpose. However, if the City denies the Employee's request and the Employee provides information that the requested time off is for a FMLA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA qualifying, the City may require the Employee to exhaust accrued leave as described above.
6. Medical Certification: Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by the City.



If the leave is requested because of the Employee's own serious health condition, the certification must include a statement that the Employee is unable to work at all or is unable to perform the essential functions of his/her position.

- a) Time to Provide a Certification: When an Employee's leave is foreseeable, and at least 30 days notice has been provided, if a medical certification is requested, the Employee must provide it before the leave begins. When this is not possible, the Employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the Employee's diligent, good faith efforts.
 - b) Consequences for Failure to Provide an Adequate or Timely Certification: If an Employee provides an incomplete medical certification, the Employee will be given a reasonable opportunity to cure any such deficiency. However, if an Employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA leave until the required certification is provided.
 - c) Recertification: The City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third party provider, jointly approved by the City and the Employee, but paid for by the City. The opinion of the third provider will be binding. An Employee may request a copy of the health care provider's opinions when there is a recertification.
7. Intermittent Leave or Leave on a Reduced Leave Schedule: If an Employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the Employee must provide medical certification that such leave is medically necessary. "Medically necessary" means that there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Employee Notice of Leave: Although the City recognizes that emergencies arise which may require Employees to request immediate leave, Employees are requested to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an Employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn) the Employee shall inform his/her Supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If the City determines that an Employee's notice may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.



Right to Reinstatement: Upon expiration of leave, an Employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the Employee had been continuously employed during the FMLA period.

Reinstatement Upon Return from Leave: If a definite date of reinstatement has been agreed upon, at the beginning of the leave, the Employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the Employee and the City, the Employee will be reinstated within two business days, where feasible, after the Employee notifies the employer of his/her readiness to return.

Employee's Obligation to Periodically Report on His/Her Condition: Employees may be required to periodically report on their status and intent to return to work. This will help to avoid any delays to reinstatement when the Employee is ready to return.

Fitness for Duty Certification: As a condition of reinstatement of an Employee whose leave was due to the Employee's own serious health condition, which made the Employee unable to perform his/her job, the Employee must obtain fitness for duty clearance from his/her health care provider that the Employee is able to resume such work. Subsequent to obtaining such certification from his/her own health care provider, the Employee must present this certification to the City physician who will issue a return to work certification. Failure to provide such certification will result in denial of reinstatement.

Reinstatement of "Key Employees": The City may deny reinstatement to a "key" Employee (i.e., an Employee who is among the highest paid 10% of all Employees of the City within 75 miles of the worksite) if such denial is necessary to prevent substantial economic cost to the operations of the City, and the Employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

Required Forms: Employees must fill out or provide the following applicable forms in connection with leave under this policy. These forms should be submitted to the Employee's Supervisor, who will forward the request to the City Administrator's Office. Employees must complete a "Request for Family or Medical Leave Form" prepared by the City. NOTE: EMPLOYEES WILL RECEIVE A RESPONSE TO THEIR REQUEST FROM THE CITY, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE. Employees must also turn in a Medical certification -- either for the Employee's own serious health condition or for the serious health condition of a child, parent, or spouse, and must have on file an authorization for payroll deductions for benefit plan coverage continuation.



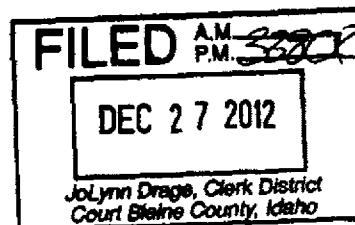
APPENDIX C

LIFE INSURANCE PROGRAM

United Heritage has been selected by the City of Sun Valley to provide life insurance for its full-time employees. Coverage for this insurance is provided by the City of Sun Valley and at no cost to employees. The amount of the life insurance provided is in the amount of \$50,000 per employee, however, the amount of the life insurance provided is reduced according to age once the employee reaches the age of 65.

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AMENDED COMPLAINT
FOR DAMAGES AND
DEMAND FOR JURY TRIAL
[I.C. § 6-2101, *et seq.*]**

COMES NOW the Plaintiff, Sharon R. Hammer, by and through her counsel of record,
Jones & Swartz PLLC, and alleges and states the following:

PARTIES, JURISDICTION, AND VENUE

1. At all times relevant hereto, Plaintiff Sharon R. Hammer ("Ms. Hammer") was residing in the county of Blaine, state of Idaho. Ms. Hammer served as the City Administrator for the City of Sun Valley from June 1, 2008 until January 19, 2012. Ms. Hammer also worked as a paid-on-call firefighter and EMT for the City of Sun Valley during this time.

2. Defendant City of Sun Valley ("City") is a municipal corporation and political subdivision of the State of Idaho. As a body politic and corporate, the City has the power to sue

and be sued. Additionally, the City may be held to compensate for actions that implement, execute or violate a policy statement, resolution, ordinance, regulation, or decision officially adopted and promulgated by its officials, each of whom may be acting in good faith.

3. Defendant DeWayne Briscoe is the current elected Mayor of the City, having been sworn into office on January 3, 2012. Prior to becoming Mayor, Defendant Briscoe was elected Council President for the Sun Valley City Council in or about January 2010, and acted in that position until January 3, 2012. Some or all of the alleged acts and/or omissions engaged in by Defendant Briscoe were done outside of the course and scope of his employment with the City and with malice or with reckless disregard for Ms. Hammer's protected rights.

4. Defendant Nils Ribí acted as an elected Council Member for the Sun Valley City Council. Defendant Ribí's first term began in or about January 2006 through January 2010. Defendant Ribí's current term began on or about January 5, 2010, and will end in January 2014. Some or all of the alleged acts and/or omissions engaged in by Defendant Ribí were done outside of the course and scope of his employment with the City and with malice or with reckless disregard for Ms. Hammer's protected rights.

5. This Court has original jurisdiction over this controversy pursuant to Idaho Code § 6-2105(3).

6. Venue is proper in this Court pursuant to Idaho Code § 5-402.

**FACTUAL ALLEGATIONS OF APPLICABLE CITY POLICIES
AND ROLES OF CITY REPRESENTATIVES**

7. Robert Youngman is the current elected Council President of the Sun Valley City Council, having been sworn into office on January 3, 2012. Mr. Youngman was first sworn in as a City Council Member in or about January 2010.

8. At all times relevant hereto, Adam King acted as the City Attorney for the City.

9. At all times relevant hereto, Kelly Ek was employed by the City as the Sun Valley City Clerk.

10. At all times relevant hereto, Michelle Frostenson was employed by the City as the Sun Valley Finance Director/City Treasurer.

11. Franz Suhadolnik is currently an elected Council Member for the Sun Valley City Council. Mr. Suhadolnik's current term began on January 3, 2012, and will end in January 2016. This current term is his first term as a City Council Member.

12. Michelle Griffith is currently an elected Council Member for the Sun Valley City Council. Ms. Griffith's term began on January 3, 2012, and will end in January 2016. This current term is her first term as a City Council Member.

13. At all times relevant hereto, but ending on January 3, 2012, Joan Lamb acted as an elected Council Member for the Sun Valley City Council. Ms. Lamb's former term ended on or about January 3, 2012.

14. At all times relevant hereto, but ending on January 3, 2012, Wayne Willich acted as the elected Mayor for the City. Mr. Willich's former term ended on or about January 3, 2012.

15. As a result of the City's national search of candidates, Ms. Hammer was appointed to the position of City Administrator by Mayor Willich following the unanimous vote of Council Members Briscoe, Ribi and Lamb, and former Council Member David Chase.

16. The terms and conditions of Ms. Hammer's employment with the City were set forth in a written employment agreement. Pursuant to that employment agreement, Ms. Hammer's duties as City Administrator commenced on June 1, 2008.

17. The terms and conditions of Ms. Hammer's employment agreement were, from time to time, amended and/or extended by agreement between her and the sitting Mayor, as allowed for within the original employment agreement.

18. On or about January 16, 1997, the City adopted its Personnel Policies & Procedures Manual ("Manual"), which has been amended from time to time. Attached hereto as Exhibit 1, and incorporated herein by reference pursuant to Idaho Rule of Civil Procedure 10(c), is a true and correct copy of the Manual governing the City and its representatives at all times relevant hereto.

19. Upon information and belief, the City has adopted other rules and regulations regarding ethical rules and professional responsibilities of City Council Members. Such other policies and rules may also have been violated by certain Defendants named herein.

20. Pursuant to the Manual, Ms. Hammer, as City Administrator, was responsible to and directed by the sitting Mayor. From June 1, 2008 until January 3, 2012, Ms. Hammer was directly supervised by Mayor Willich. From January 3, 2012 until January 19, 2012, Ms. Hammer was directly supervised by Mayor Briscoe.

21. Pursuant to the Manual, the City Attorney, Mr. King, was also directly supervised and evaluated only by the Mayor.

22. As City Attorney, Mr. King was the legal advisor for the City. He was further obligated to provide professional legal advice and services to the City Administrator and Mayor on matters related to the City's policies and procedures.

23. At all times relevant hereto, the City Administrator was Ms. Hammer.

24. At all times relevant hereto, the Mayor was either Wayne Willich or Defendant DeWayne Briscoe.

25. Pursuant to the Manual, all other City employees, including the City Clerk and City Treasurer, were directly supervised and evaluated by the City Administrator, Ms. Hammer.

26. The primary roles of City Council Members are to approve the appointment and/or discharge of certain City employees, and enact or modify ordinances and policies and procedures for the City.

27. City Council Members have no authorized role in the day-to-day administration or operations of the City.

28. City Council Members have no authority to direct another City employee in the administration of that employee's duties. No City employee is directly supervised by any City Council Member. Pursuant to the Manual, no City employee's job performance is evaluated by any City Council Member. Pursuant to the Manual, no City employee is allowed to provide confidential records to any City Council Member without approval from either the Mayor or the City Administrator. City Council Members have no authority to seek or take disciplinary action against any City employee.

29. Within the Manual, the City expressly adopted a harassment policy that prohibited "harassment in any form, including verbal, physical and visual harassment" either "by or against any of its Employees." (Ex. 1, § 7.5.)

30. When an employee believes that he or she has been harassed "by a co-worker, Supervisor, any City official, or individual outside of the City organization," the anti-harassment guidelines of the Manual instruct the employee to "immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved." (Ex. 1, § 7.5, Guidelines A.) Further, if the complaint is against "a member of the City Council, the Employee should report the complaint to the Mayor." (Ex. 1, § 7.5, Guidelines B.)

31. The Manual further prohibits retaliation against a person “for filing a harassment charge or making a harassment complaint.” (Ex. 1, § 7.5, Guidelines G.)

**FACTUAL ALLEGATIONS SUMMARIZING VIOLATIONS OF THE
IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT**

32. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

33. Throughout her employment by the City, Ms. Hammer was repeatedly and continuously harassed, physically and emotionally intimidated, and verbally abused by the conduct of Defendant Ribí.

34. Ms. Hammer repeatedly reported the incidents of harassment, intimidation and abuse to Mayor Willich, Mr. King, or City Police Chief Cam Daggett.

35. In retaliation for Ms. Hammer’s complaints against him, Defendant Ribí sought confidential documents from other City employees, including at least Ms. Ek and Ms. Frostenson, in order to create the appearance of misconduct by Ms. Hammer.

36. Ms. Ek and Ms. Frostenson distributed confidential documents regarding or relating to Ms. Hammer to, at least, Defendant Ribí and Mr. King.

37. In response to pressures from and allegations of misconduct alleged by Defendants Ribí and Brisco and Messrs. Youngman and King, which were allegedly supported by confidential employment documents supplied by Ms. Ek and Ms. Frostenson, Mayor Willich, along with Council Members Ribí, Youngman, Briscoe, and Lamb, placed Ms. Hammer on administrative leave pending an independent special investigation.

38. Following the conclusion of the City’s special investigation in late December 2011, Mayor Willich found Ms. Hammer to have done no wrong, and requested that she return to work immediately. Pursuant to the Manual, Mayor Willich’s decision was final and binding.

39. Following the swearing in of Defendant Briscoe as City Mayor in January 2012, Defendant Briscoe re-placed Ms. Hammer on administrative leave. A few weeks later, Defendant Briscoe, along with Council Members Ribí, Youngman, Suhadolnik, and Griffith, terminated Ms. Hammer from her position as City Administrator.

40. Upon information and belief, Ms. Hammer was twice put on administrative leave and then fired in response to ongoing retaliation and pressures from Defendants Ribí and Briscoe and Messrs. Youngman and King.

41. Ms. Hammer suffered adverse actions when she was placed on administrative leave and then fired.

42. Ms. Hammer suffered emotional distress and/or economic losses when she was placed on administrative leave and then fired.

**FACTUAL ALLEGATIONS OF VIOLATIONS OF THE
IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT, I.C. §§ 6-2101, et seq.**

43. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

44. In or about the fall of 2008 through spring of 2009, Ms. Hammer worked with Mayor Willich in the development and/or amendment of certain written policies pertaining to City finances and City Council operations, including but not limited to the budget policy, fund balance policy, revenue and expenditure policy, investment policy, debt management policy, Powers and Authorities of the Mayor and City Council, and a Mayor and Council Ethics Policy. Mayor Willich presented such policies to the Sun Valley City Council for review and adoption.

45. During the development of such policies, Ms. Hammer was repeatedly contacted by Defendant Ribí, both telephonically and in person, regarding specific language he demanded be included in or deleted from the draft policies. Ms. Hammer told Defendant Ribí that those

discussions were to be held with the entire City Council at a public City Council meeting, and that any changes Defendant Ribi was seeking needed to be approved by vote of the entire City Council.

46. During each such confrontation, Defendant Ribi became hostile toward Ms. Hammer. In response to Defendant Ribi's aggression, Ms. Hammer directed Defendant Ribi to discuss the issues with Mayor Willich.

47. During several of these confrontations, Defendant Ribi would stand in the doorway of Ms. Hammer's office, thereby prohibiting her ability to leave, and verbally chastise her for not doing exactly what he wanted her to do.

48. After each such confrontation, Ms. Hammer discussed Defendant Ribi's improper hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribi. Upon information and belief, Mayor Willich did discuss the same with Defendant Ribi.

49. On or about April 16, 2009, a Sun Valley City Council meeting was held. During said meeting, Mayor Willich publicly stated words to the effect that City Council Members have no authority to direct any City employee, including Ms. Hammer, to do anything. Mayor Willich further stated that City Council Members should instead direct all inquiries and requests to Mayor Willich himself.

50. In or about early 2009, Defendant Ribi requested, and was provided, a Sun Valley Fire Department ("Fire Department") pager from Sun Valley Fire Chief Jeff Carnes.

51. Normally, only members of the Fire Department are issued pagers once they have successfully completed extensive formal emergency response trainings and have officially

become a member of the Fire Department. Defendant Ribí had not completed any such requisite trainings. Defendant Ribí has never been a member of the Fire Department.

52. After he was provided a Fire Department pager, Defendant Ribí routinely appeared at the scene of emergency calls. In or about April of 2009, Defendant Ribí arrived at a call for a vehicle crash. Ms. Hammer, who was a member of the Fire Department, was on one of the response teams. Defendant Ribí began taking photographs of the scene.

53. Subsequently, Ms. Hammer raised concerns with Sun Valley Police Chief Cam Daggett, Sun Valley Fire Chief Jeff Carnes, and Mayor Willich about the potential liability to the City from Defendant Ribí's presence at emergency calls and his taking of photographs of such events. At the next Local Emergency Planning Committee meeting, Ms. Hammer attempted to explain to Defendant Ribí the potential liability he could create for the City. Defendant Ribí became very angry at Ms. Hammer, raised his hands in the air and began shaking them, and said: "No, no, no, you don't understand!" He told Ms. Hammer that he was taking photographs of the events for his own personal use.

54. Ms. Hammer explained to Defendant Ribí that if the photographs had no official City function, then he was just like any other non-City related individual, that there was no good reason for him to be allowed at emergency scenes, and that he should be barred from taking such photographs. Defendant Ribí became even more angry and red in the face, and raised his voice, shouting even louder at Ms. Hammer.

55. Eventually, Fire Chief Carnes told Defendant Ribí that the pager needed to be repaired, and the pager was returned. Over the next few weeks, Defendant Ribí caused enough commotion over not having a Fire Department pager that it was returned to him. Upon information and belief, Defendant Ribí is still in possession of said pager.

56. On or about May 14, 2009, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was repeatedly contacted by Defendant Ribí, both telephonically and in person, regarding what the City Council Priorities should be. He contacted her about the issue before those priorities were presented for discussion and approval by the City Council.

57. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to the language of the proposed City Council Priorities. During each confrontation, Ms. Hammer told Defendant Ribí that his requests were to be discussed with the entire City Council at a public City Council meeting and that any changes Defendant Ribí was seeking needed to be agreed upon by the entire City Council. Defendant Ribí became angry and hostile toward Ms. Hammer. In response to Defendant Ribí's aggressions, Ms. Hammer directed him to discuss the issues with Mayor Willich.

58. Ms. Hammer thereafter discussed Defendant Ribí's hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribí. Upon information and belief, Mayor Willich did do so.

59. On or about July 9, 2009, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was repeatedly contacted by Defendant Ribí, both telephonically and in person, regarding the Amtrak Service Resolution that was to be discussed by the City Council at the July 9th meeting. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to the language of the proposed Amtrak Service Resolution.

60. During each confrontation, Ms. Hammer told Defendant Ribí that his requests had to be discussed with the entire City Council at a public City Council meeting and that any changes Defendant Ribí was seeking needed to be agreed upon by the entire City Council.

Defendant Ribí became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribí to discuss the issues with Mayor Willich.

61. Ms. Hammer thereafter discussed Defendant Ribí's angry and aggressive conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the angry and aggressive conduct with Defendant Ribí. Upon information and belief, Mayor Willich did discuss the same with Defendant Ribí.

62. On or about January 21, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribí on several occasions, both telephonically and in person, regarding the language that he demanded be included in the Sun Valley City Council Powers and Authorities and Code of Conduct being discussed by the City Council.

63. During each such confrontation, Ms. Hammer told Defendant Ribí that those discussions were to be held with the entire City Council at a public City Council meeting and that any changes Defendant Ribí was seeking needed to be made by the entire City Council. Defendant Ribí became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribí to discuss the issues with Mayor Willich.

64. Ms. Hammer thereafter discussed Defendant Ribí's angry and aggressive conduct toward her with Mayor Willich. At this time, Ms. Hammer specifically discussed with Mayor Willich that Defendant Ribí's anger and hostility toward her was becoming a pattern of conduct. Ms. Hammer again described her repeated experiences of perceived verbal and visual abuse. Ms. Hammer and Mayor Willich discussed that Defendant Ribí's violent conduct seemed to result from Ms. Hammer refusing Defendant Ribí's requests and therefore prohibiting him from getting what he wanted. Mayor Willich told Ms. Hammer that he would discuss this violent

conduct with Defendant Ribí. Upon information and belief, Mayor Willich did discuss the same with Defendant Ribí.

65. During the January 21, 2010 Sun Valley City Council meeting, Mayor Willich again publicly reminded the City Council Members, and in particular Defendant Ribí, that City Council Members should contact him directly, not City personnel, regarding all City matters.

66. Continuing through January 2010 until about the end of May 2010, Defendant Ribí continued to contact Ms. Hammer, both telephonically and in person, and repeatedly demanded that she make modifications to the language of the Sun Valley City Council Powers and Authorities and Code of Conduct that was still being discussed by the City Council.

67. On each occasion, Ms. Hammer reminded Defendant Ribí of Mayor Willich's direction that City Council Members were to discuss such matters with Mayor Willich only, and not City employees. On each occasion, Defendant Ribí became angry and acted with hostility toward Ms. Hammer. In response to said confrontations, Ms. Hammer directed Defendant Ribí to discuss the issues with Mayor Willich.

68. In each instance, Ms. Hammer thereafter discussed Defendant Ribí's hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the angry and hostile conduct with Defendant Ribí. Upon information and belief, Mayor Willich did do so.

69. On or about March 23, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí contacted Ms. Hammer, both telephonically and in person, regarding changes that he demanded be included in the Comprehensive Audited Financial Report being prepared by City staff.

70. During such confrontations, Ms. Hammer told Defendant Ribi that he had no authority to make or request any changes to the audited financial statements, which had been prepared by independent auditors and were part of the Comprehensive Audited Financial Report. Ms. Hammer also told Defendant Ribi that the remainder of the Comprehensive Audited Financial Report was the responsibility of City staff, and not the City Council. Defendant Ribi became angry and acted with aggression toward Ms. Hammer. In response, Ms. Hammer directed Defendant Ribi to discuss the issues with Mayor Willich.

71. Ms. Hammer thereafter discussed Defendant Ribi's improper angry and aggressive conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the angry conduct with Defendant Ribi. Upon information and belief, Mayor Willich did do so.

72. During the March 23, 2010 Sun Valley City Council meeting, Defendant Ribi angrily and in a hostile manner pounded with his fists on the table in front of him regarding his disagreement with Ms. Hammer on issues surrounding the Comprehensive Audited Financial Report. Defendant Ribi's physical actions were directed at Ms. Hammer and his disagreement was with her.

73. Also during the March 23, 2010 meeting, Ms. Hammer spoke with Mr. King, who was sitting next to her, about the inappropriate and frightening actions of Defendant Ribi. Mr. King stated to Ms. Hammer that Defendant Ribi's conduct was inappropriate and unacceptable. After the meeting, Ms. Hammer further discussed Defendant Ribi's physical aggression and visual and verbal abuses toward her with Mayor Willich and Mr. King. Mayor Willich told Ms. Hammer that he would discuss the improper conduct with Defendant Ribi and, on information and belief, Mayor Willich did do so.

74. On or about May 20, 2010, a Sun Valley City Council meeting was held. During that meeting, Mayor Willich again effectively told all City Council Members that they were not to verbally abuse, or interrogate, any of the City's employees.

75. On or about June 3, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribí, both telephonically and in person, regarding the Property Tax Levy Policy that was being discussed by the City Council.

76. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to language in the proposed Property Tax Levy Policy. Ms. Hammer told Defendant Ribí that those discussions were to be held with the entire City Council at a public Sun Valley City Council meeting and that any changes Defendant Ribí was seeking had to be made by the entire City Council. Defendant Ribí became angry and hostile toward Ms. Hammer. In response to such confrontations, Ms. Hammer directed Defendant Ribí to discuss the issue with Mayor Willich.

77. Ms. Hammer thereafter discussed Defendant Ribí's angry and hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribí and, upon information and belief, he did do so.

78. On or about June 28, 2010, the Sun Valley City Council passed a Tentative Budget for Fiscal Year 2011 ("Tentative 2011 Budget").

79. A day or two following the City Council's passage of the Tentative 2011 Budget, Ms. Frostenson discovered a math error that she had made in the calculation of the total amount of the Tentative 2011 Budget. Ms. Frostenson corrected the math error. The corrected amount was not presented to the City Council for further approval. The corrected Tentative 2011 Budget

was approximately \$200,000 less than what had been approved by the Sun Valley City Council. The corrected Tentative 2011 Budget was published by the City in the Idaho Mountain Express.

80. Defendant Ribí saw the corrected Tentative 2011 Budget after it was published in the Idaho Mountain Express. After his review of the newspaper publication, Defendant Ribí called Ms. Hammer at City Hall. Defendant Ribí sounded very upset and agitated to Ms. Hammer. He immediately began berating her for the change in the corrected Tentative 2011 Budget as published in the Idaho Mountain Express.

81. Ms. Hammer attempted to discuss the matter with Defendant Ribí and offered several options for publicly resolving all of his concerns about the issue. Defendant Ribí yelled at Ms. Hammer, shouting words to the effect that she had no right to change the amount of the Tentative 2011 Budget after it had been approved by the City Council.

82. Ms. Hammer suggested that Defendant Ribí speak with Mayor Willich so that they could decide the best way to proceed on the issue. Defendant Ribí became increasingly angry, abusive and hostile, and continued to berate Ms. Hammer in a threatening manner.

83. Ms. Hammer was frightened by the tone and threatening manner of Defendant Ribí's voice and words. She told Defendant Ribí that he had no right to speak to her in that manner and that she was going to hang up the telephone, which she did.

84. Ms. Hammer immediately contacted Mayor Willich and described the incident to him. She specifically told Mayor Willich that she had become seriously concerned about Defendant Ribí's volatile emotional state and about his inability to control his anger and aggression toward her. Ms. Hammer also told Mayor Willich that she was becoming increasingly fearful of Defendant Ribí. Mayor Willich told Ms. Hammer that he would discuss Defendant Ribí's behavior with him. Upon information and belief, Mayor Willich did do so.

85. In or about the summer of 2010, Ms. Hammer, Mayor Willich, and Mr. King met and discussed the multiple events of hostile and abusive conduct by Defendant Ribí toward Ms. Hammer.

86. Mr. King told Ms. Hammer that he had conducted legal research on the issue and decided that because Defendant Ribí was an elected official, there was nothing that could be done to discipline him. Mr. King stated that if Defendant Ribí were a City employee, Mayor Willich would have cause to fire Defendant Ribí for his harassing and hostile conduct. Mr. King advised Ms. Hammer and Mayor Willich that the only thing to be done was for Mayor Willich to continue to advise Defendant Ribí to refrain from acting in a harassing, abusive and hostile manner toward Ms. Hammer.

87. In or about August through September of 2010, the City was negotiating a marketing contract with Sun Valley Marketing Alliance.

88. Several times during that timeframe, Ms. Hammer was contacted by Defendant Ribí, both telephonically and in person, regarding the language of the draft marketing contract. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to the language of the proposed marketing contract. His demanded changes had not been discussed with or approved by either Mayor Willich or the City Council.

89. Ms. Hammer told Defendant Ribí that his desired changes to the draft marketing contract had to be discussed with Mayor Willich and the entire City Council at a public City Council meeting. Ms. Hammer further advised Defendant Ribí that any changes he was seeking needed to be made by the entire City Council.

90. Council Member Ribí became angry and hostile toward Ms. Hammer. In response to his demands and harassing conduct, Ms. Hammer directed Defendant Ribí to discuss

the issue with Mayor Willich. Ms. Hammer thereafter discussed Defendant Ribí's improper and hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribí. Upon information and belief, Mayor Willich did do so.

91. On or about October 21, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí contacted Ms. Hammer, both telephonically and in person, regarding a contract for audit services that the City was negotiating with Eide Bailly, LLP. During those communications, Defendant Ribí demanded that Ms. Hammer make changes to the language of the proposed contract for audit services. His demanded changes had not been discussed with or approved by either Mayor Willich or the City Council.

92. Ms. Hammer told Defendant Ribí that his proposed changes had to be discussed with Mayor Willich and the entire City Council at a public Sun Valley City Council meeting. Ms. Hammer further advised Defendant Ribí that any changes he was seeking needed to be made by the entire City Council.

93. Defendant Ribí became angry and hostile toward Ms. Hammer because she refused to succumb to his demands regarding the contract for audit services. In response to his demands and hostile behavior, Ms. Hammer directed Defendant Ribí to discuss the issue with Mayor Willich. Ms. Hammer thereafter discussed Defendant Ribí's hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the hostile conduct with Defendant Ribí. Upon information and belief, Mayor Willich did do so.

94. On or about November 18, 2010, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí repeatedly contacted Ms. Hammer, both telephonically and in person, regarding the External Contract Policy that was being discussed by the City Council.

During those communications, Defendant Ribi demanded that Ms. Hammer make changes to the language of the proposed External Contract Policy. Defendant Ribi's requested changes had not been discussed with or approved by the City Council.

95. In response to his demands, Ms. Hammer told Defendant Ribi that his demands had to be presented to the entire Sun Valley City Council at a public City Council meeting. She also told Defendant Ribi that any changes he was seeking needed to be made by the entire City Council. Defendant Ribi became angry and hostile toward Ms. Hammer for not acquiescing to his demands.

96. In response to the onset of anger from Defendant Ribi, Ms. Hammer directed him to discuss the issue with Mayor Willich. Ms. Hammer thereafter discussed Defendant Ribi's improper conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the improper conduct with Defendant Ribi. Upon information and belief, Mayor Willich did do so.

97. On or about March 17, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribi repeatedly contacted Ms. Hammer, both by telephone and in person, regarding several issues that were to be discussed at the March 17, 2011 City Council meeting, including but not limited to the City's Management Responses to the independent auditors' Management Report, funding of consolidated dispatch services, and allowing City Council Members to have input in establishing City Council meeting agenda items. Defendant Ribi demanded that Ms. Hammer make changes to the language of the Management Responses to the Management Report.

98. During one such in-person confrontation, Ms. Hammer told Defendant Ribi that any issues related to funding of consolidated dispatch services and establishing City Council

meeting agenda items needed to be discussed either directly with Mayor Willich, or publicly with the entire City Council at the March 17, 2011 meeting. Ms. Hammer also told Defendant Ribi that she would not make changes to the Management Responses to the Management Report without direction from Mayor Willich.

99. After Ms. Hammer refused to fulfill his demands, Defendant Ribi became very agitated and began pacing nervously in Ms. Hammer's office, shaking his hands in the air and saying in an agitated voice: "No, no, no! You don't understand!" Ms. Hammer was shaken by Defendant Ribi's conduct. Eventually, Ms. Hammer was able to defuse the situation and get Defendant Ribi to leave her office.

100. After the incident in her office, Ms. Hammer discussed Defendant Ribi's physically hostile and verbally abusive conduct toward her and her growing fear of him with Mayor Willich and Mr. King. Mayor Willich told Ms. Hammer that he would discuss the conduct with Defendant Ribi and, upon information and belief, Mayor Willich did do so. Mr. King again advised Ms. Hammer that no disciplinary action could be taken against Defendant Ribi because he was an elected official.

101. In or about late 2010 through early 2011, Ms. Hammer spent substantial amounts of time working with the City's external engineering firm, CH2M HILL, and Mayor Willich preparing a detailed long-term Capital Improvement Plan ("CIP").

102. On or about April 7, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Ms. Hammer was contacted by Defendant Ribi, telephonically and in person, regarding multiple issues related to the draft CIP that was being submitted to the City Council for review and approval at the upcoming meeting.

103. During one of the in-person confrontations, Defendant Ribí insisted that it was unnecessary for an engineer from CH2M HILL to be present at all subsequent CIP meetings. Ms. Hammer attempted to explain to Defendant Ribí that the engineer from CH2M HILL had developed the extensive spreadsheets incorporated into the CIP, that Ms. Hammer was unfamiliar with the details of the CIP spreadsheets, and that it was important for the CH2M HILL engineer to be personally present to make any changes in the CIP requested by the City Council. During that confrontation, Defendant Ribí refused to let Ms. Hammer speak and repeatedly said: "No, no, no – you don't understand!"

104. Also during that confrontation, Defendant Ribí demanded that Ms. Hammer herself make substantive changes to capital project items that were included in the draft CIP, without any input from or approval of either Mayor Willich or the City Council. Again, Ms. Hammer told Defendant Ribí that he had to discuss his proposed changes with either Mayor Willich or the entire City Council at the upcoming April 7, 2011 public City Council meeting. Ms. Hammer also told Defendant Ribí that all of the changes he was seeking regarding capital projects in the CIP needed to be made by the entire City Council.

105. In addition to the substantive changes he wanted Ms. Hammer to unilaterally make to the CIP, Defendant Ribí was also adamant that multiple non-substantive modifications to the CIP, such as column sizes, colors and descriptions, be made.

106. When Ms. Hammer refused to make the substantive and non-substantive changes in the CIP as demanded by Defendant Ribí, he became livid and yelled at Ms. Hammer. Defendant Ribí yelled words at her to the effect that she did not know who she worked for, indicating that he believed she worked for him directly – not the City. Defendant Ribí's tirade

continued to the point that Ms. Hammer became concerned that he would also become physically violent toward her.

107. Throughout Defendant Ribí's violent outburst, Ms. Hammer did her best to defuse the situation. Eventually, Ms. Hammer was able to get out of her office, away from Defendant Ribí, and walked to a different part of the Sun Valley City Hall.

108. Ms. Hammer thereafter again met with Mayor Willich and Mr. King, at which time she again expressed her concerns about Defendant Ribí's emotional wellbeing, and his continuing harassment and abuse of her. Mayor Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribí. Upon information and belief, Mayor Willich did do so.

109. On or about April 21, 2011, a Sun Valley City Council meeting was held. At that meeting, Mayor Willich again effectively warned the City Council, and in particular Defendant Ribí, that Mayor Willich would not tolerate any City Council Member directing any City employee on how to do their job. Mayor Willich also stated that City employees do not work for the City Council or any of its individual members. Mayor Willich explained that, by law, all City employees work for him, as the Mayor, not for the City Council.

110. Following Mayor Willich's instruction and warning during the April 21, 2011 City Council meeting, Defendant Ribí continued contacting Ms. Hammer directly and instructing her what to do in her job.

111. In or about May of 2011, Ms. Hammer met with Mr. King to discuss her ongoing complaints and concerns about Defendant Ribí. Mr. King advised Ms. Hammer that, based upon the legal research he had conducted, because Defendant Ribí was an elected official, not a City employee, no disciplinary action could be taken against him.

112. In or about June of 2011, Defendant Ribí told Ms. Hammer in a telephone call that he wanted her to be responsible for maintaining the City's website. Shortly thereafter, Defendant Ribí confronted Ms. Hammer in person, blocking the doorway of her office in the Sun Valley City Hall. He stated that Ms. Hammer should be working on the City's website. Ms. Hammer told Defendant Ribí that David Blampied, the Sun Valley Administrative Assistant, was responsible for keeping the City's website up to date. Defendant Ribí became very angry. He raised his hands in the air and began shaking them, shouting: "No, no, no! You don't understand!"

113. Defendant Ribí said that David Blampied did not know how to keep the Sun Valley website up to date. Ms. Hammer told Defendant Ribí that she knew nothing about maintaining a website and suggested that he speak to Mayor Willich about the issue. Defendant Ribí then became more agitated and very angrily said words to the effect that Mayor Willich did not know how to do his job.

114. Eventually, Defendant Ribí left Ms. Hammer's office. Ms. Hammer thereafter met with Mayor Willich and discussed Defendant Ribí's demands that she be in charge of the City's website. They again discussed Ms. Hammer's concerns about Defendant Ribí's hostile conduct toward her. Mayor Willich told Ms. Hammer that he would discuss the issues of the City's website and Defendant Ribí's hostile conduct with him. Upon information and belief, Mayor Willich did do so.

115. On or about July 20, 2011, a Sun Valley City Council meeting was held. Prior to that meeting, Defendant Ribí repeatedly contacted Ms. Hammer, both telephonically and personally at City Hall, regarding a contract with Cox Cable that the City was negotiating.

116. During those communications, Defendant Ribi demanded that Ms. Hammer spend substantial amounts of time researching cable service contracts of other similar municipalities. Ms. Hammer told Defendant Ribi that she took direction from Mayor Willich, not from him. And, Ms. Hammer told him that she would speak to Mayor Willich about his request to expand research related to the Cox Cable contract.

117. Defendant Ribi became angry and argumentative with Ms. Hammer. He angrily said words to the effect that Mayor Willich did not know what his job was. Ms. Hammer thereafter discussed Defendant Ribi's hostile conduct toward her with Mayor Willich. Mayor Willich told Ms. Hammer that he would discuss the improper hostile conduct with Defendant Ribi. Upon information and belief, Mayor Willich did do so.

118. Upon information and belief, or about August 2, 2011, Mayor Willich met with Mr. King at Mr. King's office in Ketchum, Idaho. The two met specifically to discuss Defendant Ribi's harassment and abuse of Ms. Hammer, as well as Defendant Ribi's mistreatment of several other City employees.

119. Upon information and belief, after the August 2, 2011 meeting with Mayor Willich, Mr. King, without authority from either Ms. Hammer or Mayor Willich, discussed in detail the harassment complaints and concerns about Defendant Ribi's conduct with Defendant Ribi. Mr. King never disclosed to Ms. Hammer or Mayor Willich that Mr. King had thereafter spoken with Defendant Ribi regarding the complaints against Defendant Ribi.

120. On or about September 15, 2011, a Sun Valley City Council meeting was held. During the meeting, discussion was held regarding acceptable methods for modifying budgeted line items.

121. During a break, Ms. Hammer was trying to explain to Defendant Ribí the generally accepted accounting practices and procedures for modifying municipal budgets. Defendant Ribí became very agitated and continuously interrupted Ms. Hammer to tell her how he wanted the particular procedure done. Defendant Ribí's proposed budgeting procedure contravened the generally accepted accounting practices.

122. Every time Ms. Hammer tried to speak to Defendant Ribí about the correct budgeting procedures, he would cut her off, raise his arms in the air and begin waving his hands, saying angrily: "You don't understand!" As the conversation continued, Defendant Ribí became more and more enraged.

123. Eventually, Ms. Hammer told Defendant Ribí that she was going to discuss the matter with Mayor Willich. At that point, Defendant Ribí raised his arms, turned toward Ms. Hammer and, in a physically threatening manner, yelled: "No! You will not talk to the Mayor!"

124. In reaction to Defendant Ribí's physically and verbally violent outburst, Ms. Hammer was alarmed, immediately stepped back and away from Defendant Ribí, and stated: "Whoa!" As a result of Defendant Ribí's physical actions and yelling directed at Ms. Hammer, she was fearful of harmful or offensive contact with her body by Defendant Ribí.

125. Ms. Hammer then turned away from Defendant Ribí and walked down the hallway of City Hall and back into the Sun Valley City Council Chamber where Mayor Willich, several City Council Members and several City staff were present. Defendant Ribí followed Ms. Hammer down the hallway and into the Sun Valley City Council Chamber, and acted as if nothing had happened.

126. This incident was witnessed by City employee David Blampied. Upon information and belief, several City employees either witnessed Defendant Ribí's assault of Ms. Hammer or heard some or all of the altercation.

127. Immediately following the City Council meeting of September 15, 2011, Ms. Hammer held meetings with Mayor Willich, Mr. King, and Sun Valley Police Chief Cam Daggett. During each meeting, Ms. Hammer described the physical altercation by Defendant Ribí. Ms. Hammer also expressed her concern over Defendant Ribí's increasingly agitated, erratic and threatening behavior, and sought advice on how to respond to Defendant Ribí. Police Chief Daggett suggested that Ms. Hammer shut and lock her door when she knew Defendant Ribí to be at the Sun Valley City Hall. He also suggested that Ms. Hammer consider recording her conversations with Defendant Ribí. In turn, Mr. King agreed that Police Chief Daggett's suggestions were appropriate.

128. Upon information and belief, Mayor Willich spoke with Defendant Ribí and directed him to not act with aggression toward Ms. Hammer. Upon information and belief, Mayor Willich instructed Defendant Ribí to come to him with any request that Defendant Ribí would have otherwise sought from Ms. Hammer or any other City employee.

129. Upon information and belief, in or about November 2011, Defendant Ribí and Mr. King directly contacted City employees Ms. Frostenson and Ms. Ek, and requested employment documents regarding or relating to Ms. Hammer and Mayor Willich. Upon information and belief, Defendant Ribí was provided copies of confidential employment and payroll records by Ms. Frostenson and/or Ms. Ek.

130. Upon information and belief, in or about November 2011, Defendant Ribí and Mr. King further distributed the ill-gotten and allegedly accusatory confidential employment

materials regarding Ms. Hammer to Defendant Briscoe and Mr. Youngman, and the men utilized said materials during communications between and among each other to craft a plan for Ms. Hammer's termination.

131. On or about November 10, 2011, prompted by Defendant Ribí, Defendants Ribí and Briscoe and Mr. Youngman called for a Special Executive Session of the Sun Valley City Council to be held on November 11, 2011. On or about November 11, 2011, a Special Executive Session was held. Upon information and belief, Defendants Ribí and Briscoe, Mayor Willich, Messrs. King and Youngman, and Ms. Frostenson attended the meeting.

132. Upon information and belief, during the November 11, 2011 meeting, prompted by Defendant Ribí and Mr. King, Ms. Frostenson presented the ill-gotten and allegedly accusatory confidential employment documents regarding Ms. Hammer to Mayor Willich, Mr. Youngman and Defendant Briscoe. Upon information and belief, Defendants Ribí and Briscoe and Mr. Youngman then demanded that Ms. Hammer be terminated or forced to resign. Upon information and belief, Mr. King provided legal advice to Mayor Willich, Mr. Youngman, and Defendants Ribí and Briscoe (then Mayor-elect), in furtherance of Ms. Hammer's termination.

133. Following the November 11, 2011 meeting, Mayor Willich and Mr. King confronted Ms. Hammer in her office at Sun Valley City Hall. Mayor Willich told Ms. Hammer that she had been accused of theft, fraud and embezzlement. Mr. King told Ms. Hammer that they were considering pursuing criminal charges against her. Mayor Willich then told Ms. Hammer that he had been directed by Council Members Ribí, Youngman and Briscoe, based upon Mr. King's legal advice, to seek Ms. Hammer's resignation.

134. After being informed of the accusations, Ms. Hammer requested specific information that supported the accusations. Ms. Hammer also requested an opportunity to address the Sun Valley City Council regarding the same.

135. Ms. Hammer also advised Mayor Willich and Mr. King that she would not resign.

136. Mayor Willich then told Ms. Hammer that he, personally, did not believe the allegations, and that he felt it was a "witch hunt."

137. Ms. Hammer was never provided with any written allegations of misconduct against her. Nor was Ms. Hammer ever provided with any type of evidence in support of any claims of misconduct against her. Ms. Hammer was never allowed to address the City Council regarding said allegations.

138. On or about November 13, 2011, Ms. Hammer's former legal counsel provided written notice to the City and its elected officials of the ongoing harassment of Ms. Hammer by Defendant Ribí, which had culminated in the November 11, 2011 meeting and Council Members Ribí, Youngman, and Briscoe's attempt to force her resignation. That notice also requested that Mr. King recuse himself from any further proceedings regarding Ms. Hammer. Mr. King disregarded the request of recusal.

139. On or about November 14, 2011, the Sun Valley City Council held a continuation of the November 11, 2011 Special Executive Session. Upon information and belief, the November 14, 2011 Special Executive Session was attended by Council Members Ribí, Youngman and Briscoe, Mr. King, and Mayor Willich. Following that Special Executive Session, Council Members Youngman and Briscoe voted in favor of a special investigation to be conducted by an independent investigator into the alleged accusations of wrongdoing by Ms. Hammer. Upon information and belief, the special investigation was also to examine the

claims of harassment and assault by Defendant Ribí against Ms. Hammer. Upon information and belief, Defendant Ribí voted against a special investigation being conducted.

140. On or about November 18, 2011, Ms. Hammer was provided with written notice, prepared by Mr. King and signed by Mayor Willich, that she was being placed on administrative leave from her positions as City Administrator and paid-on-call firefighter/EMT. Ms. Hammer was provided with no explanation regarding the reason for being placed on administrative leave.

141. In or about November 2011, Ms. Hammer filed a Complaint in the Blaine County District Court and a Complaint with the Idaho Human Rights Commission. Both Complaints were regarding and relating to Ms. Hammer's claims of harassment and retaliation by the Defendants. By December 2011, all Defendants had knowledge of the District Court and Idaho Human Rights Commission Complaints.

142. In or about November 2011 through January 2012, Defendants Ribí and Briscoe, Ms. Frostenson, as well as the City's outside legal counsel retained to defend the City against Ms. Hammer's filed Complaints, and, upon information and belief, other City representatives, continued harassing Ms. Hammer by making statements to and/or about her to the effect that if Ms. Hammer did not voluntarily resign, then the City would file criminal charges against her.

143. In or about late December 2011, the City's special investigation was concluded. Based on the findings of the investigation presented to Mayor Willich, he determined that Ms. Hammer had done nothing wrong, and requested that she return to work immediately. Pursuant to the Manual, Mayor Willich's decision was final and binding.

144. On or about December 27, 2011, Ms. Hammer returned to her normal duties as City Administrator and paid-on-call firefighter and EMT.

145. On January 3, 2012, Defendant Briscoe was sworn into office as the Mayor.

146. On January 4, 2012, Defendant Briscoe placed Ms. Hammer back on administrative leave. Ms. Hammer was provided no explanation regarding the reasons for being re-placed on administrative leave.

147. On January 19, 2012, Defendant Briscoe, following the unanimous vote of Council Members Youngman, Ribi, Suhadolnik, and Griffith, terminated Ms. Hammer from her position as City Administrator.

148. The City has never provided Ms. Hammer any written explanation regarding the reasons for her termination. Ms. Hammer has requested that the City hold a hearing and afford her due process to defend any allegations of misconduct. The City has refused to hold any sort of hearing regarding or relating to her termination.

149. Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of a written announcement regarding Ms. Hammer's termination. Defendant Briscoe instructed and/or authorized the City to purchase newspaper advertisement space in the Idaho Mountain Express, where the full-page press release was published, in the color red, within a day or two of her termination.

150. Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of at least two additional press releases by the City regarding or relating to allegations of misconduct and/or harassment of other City employees by Ms. Hammer. The press releases imply that Ms. Hammer was guilty of the alleged misconduct. Defendant Briscoe instructed and/or authorized the City to purchase newspaper advertisement space in the Idaho Mountain Express, where the press releases were published.

151. Defendant Briscoe's public statements have had a deleterious and harmful effect on Ms. Hammer's ability to obtain new employment.

152. Before and after Ms. Hammer's termination, Defendant Ribí did, and continues to, maintain a website and a blog, both of which recount and discuss allegations of misconduct and/or harassment of other City employees by Ms. Hammer. Content within Defendant Ribí's website and blog imply that Ms. Hammer was guilty of the alleged misconduct.

153. Defendant Ribí's public statements have had a deleterious and harmful effect on Ms. Hammer's ability to obtain new employment.

COUNT I

RETALIATORY DISCHARGE PER IDAHO CODE §§ 6-2101, *et seq.*

154. Ms. Hammer realleges the allegations contained above as if the same were set forth in full herein.

155. At all times relevant hereto, Ms. Hammer had a valid and enforceable contract of employment with the City.

156. During Ms. Hammer's employment as City Administrator, Defendant Ribí did intentionally instruct her and attempt to direct her work as City Administrator. Defendant Ribí also intentionally harassed her, and then sought Ms. Hammer's termination after she repeatedly refused to fulfill his demands. (*See supra* ¶¶ 45-153.)

157. During her employment as City Administrator, Ms. Hammer made over twenty (20) complaints to Mayor Willich and/or Mr. King regarding Defendant Ribí's harassment of her. (*See supra* ¶¶ 48-127.)

158. Each complaint of harassment made by Ms. Hammer was a protected activity pursuant to the Manual and Idaho Code §§ 6-2101, *et seq.*

159. As a result of Ms. Hammer's refusals to fulfill Defendant Ribí's unauthorized demands for information, he verbally, physically, and visually harassed Ms. Hammer.

160. As a result of Ms. Hammer's complaints to Mayor Willich and Mr. King regarding Defendant Ribí's verbal, physical and visual harassment of her, Defendant Ribí, in concert with Defendant Briscoe and Messrs. Youngman and King, did actively seek to terminate or force the resignation of Ms. Hammer.

161. On November 18, 2011, Ms. Hammer was placed on administrative leave by the City.

162. On January 4, 2012, Ms. Hammer was again placed on administrative leave by the City.

163. Ms. Hammer was terminated from her position as City Administrator on January 19, 2012, by Defendant Briscoe following a unanimous vote of the Sun Valley City Council, then comprised of Council Members Youngman, Ribí, Suhadolnik, and Griffith.

164. Ms. Hammer's persistent rejections of performing acts for Defendant Ribí, at his personal behest and for his personal purposes, caused Defendant Ribí to intentionally and detrimentally interfere with the intraoffice relationships between Ms. Hammer and, at least, Ms. Ek and Ms. Frostenson.

165. Ms. Hammer's persistent rejections of performing acts for Defendant Ribí, at his personal behest and for his personal purposes, caused Defendant Ribí to intentionally and detrimentally interrupt the daily operations of the City.

166. As a result of Defendant Ribí's success in causing interference and discord between Ms. Hammer and, at least, Ms. Ek and Ms. Frostenson, these City employees provided Defendant Ribí with confidential City documents and other materials that allegedly implicated Ms. Hammer of wrongdoing.

167. At least Defendant Ribí and Mr. King presented such ill-gotten, accusatory materials to all other Council Members and commenced a campaign for the termination and public disparagement of Ms. Hammer.

168. Ms. Hammer was twice placed on administrative leave from her positions as City Administrator and firefighter and EMT as a result of her persistence in reporting violations and suspected violations of the Manual by Defendant Ribí to Mayor Willich and Mr. King.

169. Ms. Hammer was terminated from her positions as City Administrator and firefighter and EMT as a result of her persistence in reporting violations and suspected violations of the Manual by Defendant Ribí to Mayor Willich and Mr. King.

170. Ms. Hammer was also terminated from her positions as a result of filing Complaints with the Blaine County District Court and the Idaho Human Rights Commission.

171. Some or all of the foregoing acts and/or omissions engaged in by Defendants Ribí and Briscoe were done outside of the course and scope of their employment with the City and with malice or with reckless disregard for Ms. Hammer's protected rights.

172. As a direct and proximate result of the unlawful and intentional reprisals against Ms. Hammer because she engaged in protected activities, Ms. Hammer has suffered severe economic damages, including but not limited to a loss of past and future wages, retirement benefits, medical benefits, other fringe benefits, and other losses to be proven at trial. Ms. Hammer has also suffered emotional damages, including but not limited to public ridicule, contempt, and hatred; embarrassment; emotional pain and suffering; and loss of enjoyment of life.

ATTORNEY FEES AND COSTS

Ms. Hammer has been forced to incur attorney fees and costs related to the prosecution of this matter. She is entitled to recover her reasonable costs and attorney fees pursuant to Idaho Code § 6-2105(1), Idaho Rule of Civil Procedure 54, and/or other applicable law.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of no less than twelve (12) persons on all issues to be tried.

NOTICE OF RESERVATION OF RIGHT TO AMEND

Plaintiff reserves the right to ask the Court for leave to amend any and all of her allegations and counts contained herein to conform to the evidence of record and facts subsequently learned by Plaintiff. Plaintiff also reserves the right to amend any and all of her allegations and counts contained herein to include a claim for punitive damages.

DEMAND FOR JUDGMENT FOR RELIEF

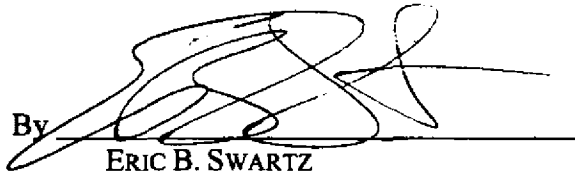
WHEREFORE, Plaintiff prays for relief against the Defendants as follows:

1. An order reinstating the Plaintiff to the same position held before she was wrongfully terminated;
2. An order reinstating the Plaintiff's full fringe benefits and seniority rights;
3. An award of special and general damages for injury or loss caused by each violation of the Idaho Protection of Public Employees Act, including but not limited to lost wages, benefits and other remuneration;
4. An award of pre-judgment and post-judgment interest as allowed by law;
5. An award of attorney fees and costs, or \$20,000 as reasonable attorney fees and costs in the event judgment is obtained by default; and

6. Any further relief to which the Plaintiff is entitled as the Court may deem just and equitable, including the right to seek leave to claim awards of punitive damages.

DATED this 26th day of December, 2012.


JONES & SWARTZ PLLC

By 
ERIC B. SWARTZ
JOY M. VEGA

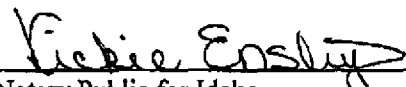
VERIFICATION

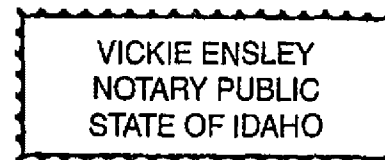
STATE OF IDAHO)
 : ss.
County of Ada)

The Plaintiff, being sworn, having read the foregoing, says that the facts set forth therein are true, accurate, and complete to the best of Plaintiff's knowledge and belief.


SHARON R. HAMMER, Plaintiff

SUBSCRIBED AND SWORN TO before me this 26th day of December, 2012.


Notary Public for Idaho
My Commission expires: 9/25/14



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of December, 2012, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
☐ Fax: 383-9516
☐ Messenger Delivery
☒ Email: kirt@naylorhales.com

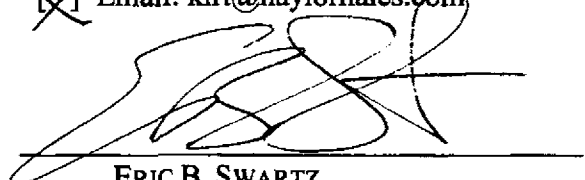

ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AMENDED COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL

EXHIBIT 1
TO AMENDED COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL



**CITY OF SUN VALLEY
PERSONNEL POLICIES & PROCEDURES MANUAL**

Adopted by the Mayor and City Council
Resolution No. 1997-2 January 16, 1997
Resolution No. 1997-9 January 16, 1997
Resolution No. 2001-03 May 16, 2001
Resolution No. 2004-08 November 18, 2004
Resolution No. 2007-06 February 15, 2007
Resolution No. 2007-12 March 15, 2007



WELCOME!

Welcome to the City of Sun Valley. We congratulate you on your decision to join us. We trust you will be happy with this decision. Every effort will be made on our part to accomplish this end.

The City of Sun Valley has carefully selected you to be one of its Employees. We realize that our strength and future growth depends directly on the efforts of all our Employees. Cities are successful due to the results obtained from sincere and enthusiastic Employees who work together as a team to provide the highest level of services to residents and visitors.

All jobs are important at the City of Sun Valley. No matter what your assignment may be, you can be assured that it is important and that the degree of efficiency and professionalism you demonstrate will have bearing on your future and on the future of the City organization and the residents and visitors we serve.

MISSION STATEMENT

We, the Employees and elected officials of the City of Sun Valley, are dedicated to providing a positive environment wherein the quality of life and economic well-being of all who live, visit and work in Sun Valley may be preserved.

The success of the City of Sun Valley relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens through the personal contributions of all.

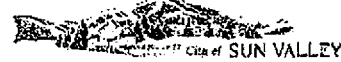


TABLE OF CONTENTS

SECTION 1: GENERAL POLICIES	Page Numbers
1.1 Purpose.....	1-1
1.2 Establishment of Policies and Procedure.....	1-1
1.3 Equal Employment Opportunity.....	1-1
1.4 At Will Employment Policy.....	1-2
1.5 Employment Agreements.....	1-2
 SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES & PROCEDURES	
2.1 General Administration.....	2-1
2.2 Distribution.....	2-1
 SECTION 3: EMPLOYMENT PRACTICES	
3.1 Appointing Authority.....	3-1
3.2 Administration Authority.....	3-1
3.3 Personnel Records.....	3-1
3.4 Recruitment and Selection Procedures.....	3-2
3.5 Appointments.....	3-3
3.6 Employment of Relatives.....	3-3
3.7 Transfers.....	3-4
3.8 Resignations/Dismissals.....	3-4
3.9 Hours of Work.....	3-4
3.10 Attendance and Punctuality.....	3-4
3.11 Work Schedules.....	3-5
3.12 Resident Requirements.....	3-5
3.13 City Vehicles.....	3-5
3.14 Travel Expense Reimbursements.....	3-5
3.15 Electronic Communication Systems Usage Policy.....	3-6
 SECTION 4: JOB DESCRIPTIONS & SALARY PLAN	
4.1 Job Descriptions.....	4-1
4.2 Full Time and Part Time Status.....	4-1
4.3 Seasonal & Temporary Employees.....	4-2
4.4 Volunteers.....	4-2
4.5 Exempt Employees.....	4-2
4.6 Salary Plan.....	4-3
4.7 Pay Periods.....	4-4
4.8 Overtime Pay.....	4-4
 SECTION 5: BENEFITS	
5.1 Holidays.....	5-1
5.2 Vacation.....	5-1
5.3 Sabbatical Leave.....	5-2
5.4 Sick Leave.....	5-2
5.5 Medical Insurance.....	5-3
5.6 Family Care & Medical Leave Policy.....	5-3
5.7 Life Insurance.....	5-3



5.8 Workers Compensation Insurance	5-3
5.9 State Unemployment Insurance, Social Security Benefits.....	5-3
5.10 Section 457 Deferred Compensation	5-4
5.11 Special Leave	5-4

SECTION 6: EMPLOYEE EVALUATION

6.1 Evaluation Procedure.....	6-1
6.2 Appeal.....	6-2

SECTION 7: STANDARDS OF CONDUCT

7.1 Purpose	7-1
7.2 Safety Policy.....	7-1
7.3 Conflict of Interest.....	7-1
7.4 Confidentiality of Records.....	7-1
7.5 Harassment Policy	7-1
7.6 Substance Abuse.....	7-3
7.7 Outside Employment.....	7-3
7.8 Proprietary Rights	7-3
7.9 Dress & Personal Grooming	7-4
7.10 Smoke-Free Work Environment.....	7-4
7.11 Gratuities.....	7-4

SECTION 8: DISCIPLINE

8.1 Policy & Purpose	8-1
8.2 Supervisory Responsibility.....	8-1
8.3 Applicability	8-1
8.4 Causes for Disciplinary Action.....	8-1
8.5 Forms of Disciplinary Action	8-2
8.6 Administration of Discipline.....	8-3
8.7 Informal Review	8-3

APPENDICES

Appendix A: Medical Insurance	A-1
Appendix B: Federal Family & Medical Leave Act.....	A-2
Appendix C: Life Insurance	A-3

Acknowledgment of Receipt of City of Sun Valley Manual & Policy Updates



CITY OF SUN VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL

ACKNOWLEDGMENT OF RECEIPT

I, _____ acknowledge receipt of the City of Sun Valley Personnel Policies and Procedures Manual and/or any amendments or changes to the Manual.

I understand that I have thirty (30) days to read and review the Manual and to fully understand the provisions in the Manual.

I understand that this Manual is not a contract and cannot create a contract.

I understand that I am obligated to perform my duties of employment in conformance with the provisions of the Manual and any additional rules, regulations, policies or procedures of the department in which I work whether or not I choose to read the Manual or any amendments or changes to the Manual.

Signature of Employee

Title: _____

Date: _____



SECTION 1: GENERAL POLICIES

1.1 PURPOSE

The purpose of the *Personnel Policies and Procedures Manual* is to set forth the standards, procedures, and regulations guiding employment with the City of Sun Valley. It is predicated on the belief that achievement of the City's goals and objectives rests primarily on the efforts, dedication and cooperation of the Employees. In order to maintain efficient and effective City services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered. Where federal law or funding source regulations are in conflict with this Manual, the City shall follow such laws or regulations as applicable.

1.2 ESTABLISHMENT OF POLICIES AND PROCEDURES

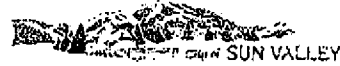
The *Personnel Policies and Procedures Manual* shall be prepared and maintained by the City Administrator or his/her designee. In response to changes in applicable laws, regulations and changing conditions within the City, the City Administrator shall periodically review and recommend additions, deletions or amendments to these policies to the Mayor and Council. Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation.

The Manual, with all adopted amendments and changes, supersedes all previous policies not consistent with the provisions hereof. The Manual, however, it is not intended to be an exclusive source of rules and regulations concerning employment. Individual City departments are entitled to establish work standards and procedures necessary to implement City policy or to efficiently carry out the functions of the department, provided such standards do not diminish the benefits or protections granted to Employees by City policy.

The contents of this Manual are subject to modification at any time without notice. The City reserves the right to revise, supplement or rescind any of the provisions of the Manual as deemed appropriate. It is understood that any such modification may alter the rights and obligations of the City to its Employees. The City reserves the right to change these policies and procedures as the City deems appropriate.

1.3 EQUAL EMPLOYMENT OPPORTUNITY POLICY

The selection of all City Employees and all employment decisions, including classification, transfer, discipline and discharge will be made without regard to race, religion, gender, age, national origin. No job, or class of jobs, will be closed to any individual except where a mental or physical attribute, gender or age is a bona fide occupational qualification. It is the policy of City to comply as applicable with the Americans with Disabilities Act. All objections to application of the City's Equal Employment Opportunity Policy shall be brought to the attention of the City Administrator or in the case of objection to actions undertaken by the City Administrator to the Mayor.



1.4 AT WILL EMPLOYMENT

The Personnel Policies and Procedures Manual is not a contract. All Employees of the City are Employees "At Will" and may be terminated at any time with or without cause.

1.5 EMPLOYMENT AGREEMENTS

The City may enter into written employment agreements with any Employee. The provisions of any employment agreement shall supercede this Manual in the event of a conflict.



SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES AND PROCEDURES

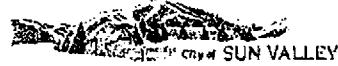
2.1 GENERAL ADMINISTRATION

Authority for the administration of Personnel Policies and Procedures is delegated to the City Administrator, who is responsible to and directed by the Mayor, and who is responsible for the City's day-to-day operations.

- A. It shall be the responsibility of the City Administrator to provide interpretation and advice to Department Heads and Supervisory staff concerning the application of these policies and procedures. The City Administrator shall make the final determination of questions of interpretations of these policies and the application of these policies.
- B. City Attorney: As the legal counsel for the City, the City Attorney shall provide professional legal advice and services to the City Administrator and Mayor on matters related to these policies and procedures.

2.2 DISTRIBUTION

At the time of employment, each Employee shall receive a copy of this Manual. It is the responsibility of the Employee to familiarize him or herself with the contents of the Manual and to acknowledge its receipt in writing. Periodic updates or changes shall also be acknowledged in writing.



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SECTION 3: EMPLOYMENT PRACTICES

3.1 APPOINTING AUTHORITY

The appointment and discharge of the City Administrator, City Clerk, City Treasurer and City Attorney shall be made by the Mayor and approved by the majority of the City Council. All other personnel shall be appointed or discharged by the City Administrator.

3.2 ADMINISTRATION AUTHORITY

The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor. All other personnel, including the City Clerk and City Treasurer, shall be directly supervised and evaluated by the City Administrator.

3.3 PERSONNEL RECORDS

Complete and permanent records of the employment history of each current and former Employee of the City shall be maintained by the City Administrator's office. These files shall contain all documents permitted by Federal and State law. No document shall be placed in an Employee's file without his/her knowledge and receipt of a copy of same.

Personnel records are confidential documents and are only to be reviewed by those staff on a need to know basis. Such review is restricted to the Employee, the Employee's Supervisory chain, the City Administrator and the Mayor.

The City Administrator is responsible for assuring that the following information and documents are included in each Employee's Personnel File:

1. The original employment application and resume;
2. A copy of the offer letter;
3. Copies of all personnel action forms, such as change of name or address, salary and wage adjustments, promotion or demotions, separations, disciplinary actions, or records of leaves of absences;
4. Copies of performance appraisals;
5. Copies of all licenses and certificates pertinent to the job requirements;
6. The Employee's signed statement of having received, read and understood the City of Sun Valley's Personnel Policies & Procedures Manual; and
7. A copy of the Employee's background investigation and verification of references.

The City Administrator's Office will maintain separate Employee records as the Employee's Payroll Record File, which will include the following:

1. A copy of the Employee's W-2 form;
2. A copy of the Employee's Employment Eligibility Verification Form (Form I-9), required for all Employees by the U. S. Department of Justice, Immigration and Naturalization Service;



3. A copy of the Employee's PERSI application and authorization for salary deduction to provide for benefits;
4. A copy of any authorization for salary deduction for benefits;
5. Copies of the Employee's selection of benefits;
6. Time and attendance records;
7. Payroll records;
8. Wage garnishments.

The confidentiality of all individual Employee records shall be strictly enforced subject to the conditions outlined above. An Employee's Personnel File and Payroll Record File shall not be removed from the City Administrator's office except upon written approval of the City Administrator.

3.4 RECRUITMENT AND SELECTION PROCEDURES

The employment hiring process will be comprised of the following stages:

- A. Vacancies: When a vacancy occurs, a request to fill the vacant position shall be prepared by the respective Department Head and presented to the City Administrator. It shall include information pertinent to the decision of whether or not to fill the vacancy. The City Administrator shall review the budget to ensure that each vacancy is within its budgeted position allocation. The City Administrator shall also consider the availability of in-house candidates to fill the vacancy.
- B. Recruitment Process: The recruitment process will begin when a request is received and approved by the City Administrator. The City Administrator will determine whether the recruitment will proceed as an "open competitive," a "closed promotional," or an "open/promotional" opportunity. The City Administrator shall determine the recruiting sources to be used and the recruitment time period, taking into account the City's needs, recruitment strategy, and any special requirements of the position.
- C. Notice of Recruitment: Notice of all City recruitments shall be posted on the City's bulletin boards or other designated locations for a period of at least three business days. This notice shall include the deadline for filing applications.
- D. Types of Examinations:
 1. Open Competitive: This recruitment shall be open to the public. Such recruitment shall be used to fill entry level vacancies, and vacancies above the entry level where sufficient qualified applicants for promotion are not available.
 2. Closed Promotional: This recruitment shall be open only to regular and probationary Employees of the City who meet the minimum requirements as set forth in the promotional recruitment's job announcement.



3. Open and Promotional: When in the interests of the City, an external search is deemed necessary to fill a particular position, a promotional recruitment may also be open to the public.

- E. Application Process: All applications for employment shall be made on an official City application form. The form will require information covering a candidate's education, training, experience, and other information deemed pertinent and allowable by law. When the position to be filled requires special or exceptional
- F. Selection Methods: Applicants for positions shall meet the minimum qualifications of the position for which they have applied. Qualifications shall be evaluated on the basis of information provided on the application form, resume, and any supplemental documents required by the City, as well as on written and performance test scores, interview scores and background investigations.

3.5 APPOINTMENTS

When a candidate has been chosen for a position, the City Administrator shall prepare an offer letter. This letter will contain the following information:

1. The position title;
2. The effective date of hire;
3. The wage/salary which will be offered; to include any intent and purpose to adjust salary not related to merit increase;
4. The working hours;
5. Notice that the appointment is contingent upon successful completion of a physical examination, if the position is in a classification which requires such;
6. A copy of the job description; and
7. A signature block for the candidate to sign, indicating that he/she has accepted the position under the above circumstances.

A copy of the offer letter shall be kept in the Employee's permanent personnel file.

3.6 EMPLOYMENT OF RELATIVES

The City does not employ members of an Employee's immediate family, unless the City Administrator approves this arrangement.



3.7 TRANSFERS

An Employee may request a transfer from one department to another, providing the position that the Employee wishes to transfer to is in the same classification series and that the position is an equal or lower classification in the series than the classification in which the Employee is currently. In addition, the Employee must meet the minimum qualifications for the position as set forth in the classification specification documents.

The Employee shall direct his/her request to the City Administrator. The request shall then be forwarded to the appropriate Department Head. Such requests shall be given consideration when a suitable vacancy occurs and must be approved by the City Administrator.

This transfer policy is not designed to, nor does it create any contract right, express or implied, to a transfer, nor does the City's refusal to grant an Employee's request for transfer give rise to any claims against it. The City reserves the right to fill any vacancy by transfer or by other recruitment means, as deemed appropriate by the City Administrator.

3.8 RESIGNATIONS/DISMISSALS

Upon an Employee's resignation or dismissal, records pertaining to the separation of the Employee shall remain part of the Employee's permanent personnel file. The City Administrator shall ensure that separations from employment are handled in a manner that will not interrupt the orderly operation of City business.

Upon separation from employment, an Employee shall be paid for any wages/salary due and for all unused vacation time at the Employee's regular rate of pay within 48 hours of separation from service. In the event of an Employee's death, the estate of the Employee shall be paid all of the Employee's accrued salary and vacation leave.

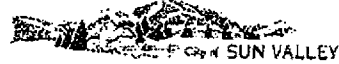
3.9 HOURS OF WORK

The City Administrator shall determine the hours during which City office and departments shall be open to serve the public. The hours of work of individual positions may be proposed by the respective Department Head and approved by the City Administrator in order to serve the needs of the City.

The work schedule will normally provide for a work week of forty (40) hours within a seven-day period, from 8:00 a.m. to 5:00 p.m., including a lunch period. Other work schedules may be established by the City Administrator in order to meet the needs of specific City services.

3.10 ATTENDANCE AND PUNCTUALITY

Employees are expected to be at work on their normally scheduled workdays, unless they have received approval for an absence from their immediate Supervisor. An Employee who is absent from work for three (3) consecutive working days, without Supervisory authorization or a statement of justification from an attending physician, will be considered to have abandoned



his/her job as of the last day of active employment, and will be declared to have voluntarily quit, unless the City subsequently determines that the absence was due to circumstances beyond the Employee's control. Because of overtime requirements, non-exempt positions should not begin work before their assigned time nor leave work later than their assigned ending time without the prior approval of their Supervisor.

Non-exempt Employees who are more than ten (10) minutes late to their assigned place of work are considered tardy. An Employee who regularly fails to arrive at work on time without a legitimate reason or who does not notify his/her Supervisor is subject to disciplinary action. The Supervisor shall determine whether the reason given is legitimate. Employees who cease and/or leave work before the end of their assigned work day shall also be subject to disciplinary action.

3.11 WORK SCHEDULES

The City Administrator will work with the Department Heads to establish normal work schedules. The City retains the right to alter work schedules in order to best meet the needs of the organization and of the public.

3.12 RESIDENT REQUIREMENTS

The Fire Chief, Assistant Fire Chief and Street Superintendent are required to reside within the incorporated limits of Sun Valley or Ketchum. The City may on an annual basis provide a housing allowance or suitable housing to aid in the additional costs of nearby residency. In addition, emergency services departments may adopt restrictions on travel time and distance requirements for Employees or volunteers in order to accomplish Employee response during emergencies.

3.13 CITY VEHICLES

Drivers of City-owned vehicles or drivers of private vehicles while on City business shall obey all traffic and speed laws. The use of seat belts is required at all times. Controlled substances shall never be carried in a City vehicle or a private vehicle on City business, with the exception of evidence by law enforcement officials.

City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor.

The Fire Chief is provided City-owned vehicles which may be taken home and used during any work period for travel within or out of the City. In the absence of the Fire Chief, the Assistant Fire Chief may use the City-owned vehicle during any work period for travel within or out of the City.

3.14 TRAVEL EXPENSES REIMBURSEMENT

Reimbursement for expenses incurred when an Employee is traveling on City business shall be



according to the following:

1. Prior to traveling outside the County, the Employee shall make written application and obtain approval from the Supervisor for the trip. Travel requests shall include an estimate of the costs involved.
2. Requests for reimbursement of expenses shall be submitted on a travel expenses form. All expenditure receipts shall be submitted when a request for reimbursement is made.
3. The City Administrator will set maximum per diem allowances for meals.
4. If an Employee is authorized to use his/her private vehicle for City business, mileage shall be paid at the rate set by the Federal tax reimbursement rate.

3.15 ELECTRONIC COMMUNICATION SYSTEMS USAGE POLICY

A. PURPOSE: The availability of electronic communication systems within the work environment provides many opportunities for enhancement of productivity and effectiveness. These systems also entail the opportunity for rapid transfer and broad dissemination of sensitive material that can have damaging effects on the City of Sun Valley, its employees, and the public, if not managed properly. It is important, therefore, that the City of Sun Valley establish a policy which provides direction to City employees regarding the purchase, lease, license and use of electronic communication systems.

B. ADMINISTRATION: The City Administrator or her/his designee shall be responsible for the implementation of the Electronic Communication System Usage Policy.

C. DEFINITIONS:

1. Electronic Communications System includes cell phones, PDA's, hardware, software, webpage, computers, electronic mail systems (email), voice mail systems, paging systems, electronic bulletin boards, Internet services, fax machines, mobile digital terminals (MDT), and any part of the City of Sun Valley leased or acquired network system(s) of any sort.
2. Computer - A programmable electronic device that can store, retrieve, and process data, including any computer issued or maintained by the City of Sun Valley, including but not limited to both laptop and desktop versions, or any computer which is attached to or a part of the City of Sun Valley computer network.
3. Hardware - The physical components of a computer, including the monitor, keyboard, central processing unit, floppy drives, CD-ROM drives, external storage media, and all peripheral accessories, including but not limited to, network connections, printers, scanners, speakers, printer cables and mouse.



4. License - To permit or authorize the use of.
5. Network System - The hardware and software which provides for the interconnection of City computers.
6. Programming - A sequence of coded instructions that can be inserted into a mechanism (such as a computer) to work out a series of instructions.
7. Shareware - Computer software that can be used and copied without charge. However, shareware is copyrighted and, if the copyright holder requests, a donation or fee must be paid if the software is used regularly.
8. Software - The entire set of programs, procedures and related documentation associated with a computer system/program.

D. PURCHASES, COPYRIGHT AND LICENSES

1. The purchase, lease, or license of all electronic communication system hardware and software must be approved by the City Administrator or her/his designee.
2. Copying of computer software owned by the City of Sun Valley shall be governed by the copyright agreement.
3. License agreements will be maintained by the City Administrator or her/his designee. The license agreement shall be the ultimate rule governing the use of the software. Any act permitted by this policy, but not permitted by the license agreement of the software program, shall be considered null and void.
4. Software registration must be completed for all software purchased by the City at the time of purchase and shall list the City of Sun Valley as the purchaser and list the City Administrator as the contact for inquiries as to the use of the product.

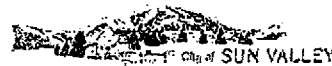
E. GENERAL REQUIREMENTS

1. The electronic communication system is to be used for City business purposes only.
2. Incidental personal use of the Internet is allowed from time-to-time during breaks, including the lunch hour, to check for email on a personal, non-City account(s).
3. All messages composed, sent, stored, copied or received via electronic communication systems are the property of the City. These messages are not private property of any employee, and no employee should have any



expectations of privacy in such messages. The City Administrator has the right to access, close and/or disclose all messages sent via an electronic communications system. Employees, therefore, should treat electronic communications with the same degree of propriety and professionalism as official correspondence.

4. The City Administrator shall regulate the requirements for City password usage. All employees shall change, alter, or modify their passwords as required by the City Administrator.
5. Confidential electronic files must be professionally erased or storage devices containing these files removed from any computer or hardware device prior to the computer or hardware device being removed from the agency for servicing, repairs, or replacement.
6. The City Administrator must be notified immediately when --
 - a. Sensitive information is or suspected of being lost or disclosed to unauthorized parties.
 - b. Unauthorized use of the electronic communications system has taken place, or is suspected of taking place.
 - c. Passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
 - d. Any unusual system behavior such as missing files, frequent system crashes, misrouted messages, and the like appear because it may indicate a computer virus infection or similar security problem.
7. It is the intent of the City to provide the tools that every employee needs to successfully complete assignments. Occasionally an employee is allowed to use his or her personal computer for City business subject to prior department head approval and the following conditions:
 - a. Any personal computer used for City business will be regulated by this policy as if it were a City purchased computer.
 - b. All document files, emails, and any other type of file created on a personally-owned computer that is being used for City business is subject to the Public Records Law, and the employee who owns the computer must make the computer and its contents available for inspection in accordance with that law at any time it is requested.
8. The City Administrator shall define the network server uses, organizational format, use of older/file protection, storage and other aspects of network capabilities. Employees have the responsibility to use the network server effectively in meeting these directions.



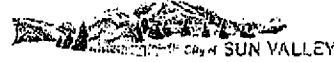
9. Electronic communications are subject to the provisions of Resolution 2006-05 - Records Retention.
10. An employee may indicate her/his affiliation with the City of Sun Valley in bulletin board discussions, chat sessions, and other offerings on the Internet. This may be done by explicitly adding certain words, or it may be implied. In such cases where the employee states her/his affiliation with the City, she/he must also clearly indicate the opinions expressed are her/his own and not necessarily those of the City of Sun Valley.
11. The use of electronic communication systems shall be in keeping with applicable Federal, State, local, civil and criminal laws.

F. UNAUTHORIZED ACTIVITIES

1. No personally owned software applications or shareware software may be installed on a City computer, including, but not limited to, games, entertainment software, and screen savers unless written permission is given by the City Administrator and it is allowed by the licensing agreement of the software.
2. No employee may tamper with, change, delete, reprogram, copy protected codes, enter into areas of the program reserved for programming, insert additional programming, or rename any computer software program purchased, leased, or licensed for use by the agency, unless it is authorized by the licensing agreement. No employee shall perform any repairs, installations, modifications, removal, or relocation of any computer hardware, peripherals, and associated components without first obtaining authorization by the City Administrator.
3. Electronic transfer of files, software, or programs purchased by the City is not authorized unless it is allowed by the licensing agreement of the software product.
4. Employees shall not use the email account or password assigned to another individual to send or receive messages unless authorized to do so by the owner of the email account.
5. The electronic communication system shall not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non job-related solicitations, or used for any personal commerce or purchases.
6. The electronic communication system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, or proprietary information. Failure to observe copyright or license agreements may result in disciplinary action and/or legal action by the copyright owner.



7. No employee shall utilize or cause any City-owned computer to utilize an automatic log-on. Employees are prohibited from leaving a City computer unattended while logged on.
8. The encryption of files and the use of encryption programs are not permitted on any City computer without the prior authorization of the City Administrator.
9. No employee shall bypass or modify any installed security systems or menu interfaces without the expressed permission of the City Administrator.
10. No employee shall knowingly introduce any computer virus into any part of the electronic communications system operated by the City. Employees must use due care and caution to avoid inadvertently introducing computer viruses into any City computer by any means. Any material received which is suspect, e.g. multiple copies of email with the same subject line information received in rapid succession, should not be opened.
11. Viewing, downloading, communicating and/or transmitting material (for other than law enforcement purposes) that is known to involve the use of obscene language, images, jokes, sexually explicit materials or messages that disparage any person, group, or classification of individuals is strictly prohibited. Any employee who uses the City's equipment or network for these purposes will be subject to an immediate, severe disciplinary response.
12. Employees shall not use photographs or other material depicting City logos, vehicles, etc. on any personal or privately-owned home page. Personal/private home pages shall be clearly identifiable as personal pages.
13. Electronic communication systems are for the exclusive and sole use of City employee and shall not be used at any time by family members, friends or other persons not employed by the City.



SECTION 4: JOB DESCRIPTIONS & SALARY PLAN

4.1 JOB DESCRIPTIONS

All Employee positions in the City will have a job description which will include but is not limited to the position title, statement of duties, required skills, knowledge and abilities, education and experience requirements. The job description will be developed by the Department Head and approved by the City Administrator. A review of each job description shall be conducted periodically by the City Administrator. The City Administrator may from time to time abolish certain job positions based upon the needs of the City.

4.2 FULL-TIME AND PART-TIME STATUS

The status of the position held with the City may affect the status of obligations or benefits associated with City employment. The procedures for hiring, promotion and transfer of full-time Employees shall be subject to the provisions of this Manual. Personnel actions concerning part-time or casual Employees are not subject to guidelines set forth herein unless the Manual's provisions expressly provide therefore. The primary groups of Employees and their respective status is outlined as follows:

A. FULL TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least 30 hours of scheduled work during a seven (7) calendar day period. Full-time regular Employees shall receive all Employee benefits provided by the City as such benefits now exist or may be subsequently changed.
2. Police Officer Idaho Post Certification: Any police officer obtaining an Idaho post certification shall be eligible for a regular employment status.
3. The Police Department has selected a full time employment scheduling period of fourteen (14) days as allowed by FLSA. This scheduling may be changed by the Police Chief with the approval of the City Administrator.

B. PART TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least twenty (20) hours, but not as much as thirty (30) hours, of scheduled work during a seven (7) calendar day period. Part-time regular Employees shall receive reduced Employee benefits in accordance with policies adopted by the Council. The scope of benefits received may vary proportionately with the number of hours typically scheduled for a part-time regular Employee. The number of hours scheduled may also affect the Employee's obligation to participate in certain mandatory state benefit programs. Certain benefits may not be available.



4.3 SEASONAL & TEMPORARY EMPLOYEES

This Section sets forth policies governing the City's use of temporary and seasonal Employees, and volunteers. Except as specifically provided within this Section, volunteers and seasonal Employees do not have any rights as regular full or part-time Employees.

- A. Seasonal and Temporary Employees may be employed on an as-needed basis by the City, not to exceed 1,000 hours per fiscal year (October 1 through September 30). Within budgetary constraints, the City Administrator will have the authority to appoint temporary and seasonal Employees.
- B. The City Administrator will determine the appropriate hourly rate of pay and benefits, if any. All Seasonal and Temporary Employees will be retained with a written Letter of Employment.

4.4 VOLUNTEERS

Volunteers may be utilized by the City in any capacity that is deemed suitable by the City Administrator. The number of volunteers being utilized by the City at any one time may vary by programmatic needs and the availability of volunteers available with specialized skills or abilities which may be needed.

Upon the initiation of the volunteer relationship, the volunteer shall sign a "Volunteer Waiver Form." Volunteers shall submit a monthly log detailing the number of hours contributed to the City. The City will utilize volunteers to provide fire suppression services.

The City shall provide coverage for all volunteers under the State workers' compensation system as required by law. The City Administrator will determine the amount of hourly pay and conditions for such pay and/or benefits, if any.

4.5 EXEMPT EMPLOYEES

The City Administrator is authorized to evaluate each job position as necessary to determine whether it shall be "exempt" from certain work provisions as defined in the Fair Labor Standards Act (FLSA). The following positions have been determined to be "exempt": City Administrator, Police Chief, Fire Chief, Assistant Fire Chief, Director of Community Development, Street Superintendent, City Clerk, Finance Manager/City Treasurer and the Building Official.



4.6 SALARY PLAN

A. POLICY

The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan.

The Salary Plan shall include all job positions in the City except the City Administrator and City Attorney and shall set forth salary ranges for those positions. The City Administrator shall have the responsibility to develop and maintain the Salary Plan. The Salary Plan will establish minimum and maximum salaries for each job position, with the exception of the City Administrator and City Attorney. The Salary Plan will be presented to the Mayor and City Council for adoption. Every third year, commencing in April 2010, the City Administrator will update the Salary Plan for regional market changes to ensure job positions are competitive. (Amended by Resolution 2007-06)

B. SALARY PLAN ADMINISTRATION

The Salary Plan shall be implemented and administered by the City Administrator who shall determine the rate of pay for each Employee. Movement in the Salary Plan is not automatic. The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds.

In order to properly compensate Employees, salary determinations shall be based upon the following:

1. New Employees: The job qualifications, experience and education of the new Employee will be evaluated in determining a new Employee's starting salary within the Salary Plan.
2. Merit Increases: In order to properly compensate Employees, adjustments in salary shall be based on a merit pay system. Adjustments will not be automatic, but shall depend upon achieving an "above standard" rating or "outstanding" rating on an annual performance evaluation or a six month probationary performance evaluation. Salary adjustments for those Employees achieving a rating worthy of merit increase consideration shall fall within the salary plan range for that position, unless approved otherwise by the City Administrator.
3. Employee Changes In Status:
 - a. Promotions: An Employee who is promoted to a higher classification shall be placed in the higher salary range and will receive an increase not to exceed the maximum rate in the new range. When promoted, an Employee will retain his/her original



hire date for purposes of calculating annual benefits, but the date of promotion will be used for purposes of performance evaluations and merit consideration.

- b. Voluntary Demotion: An Employee who voluntarily is demoted shall be placed in the new job position salary range, at a step as close as possible to his/her previous step and range. However, his/her salary shall not exceed the maximum rate for the new, lower salary range.
- c. Involuntary Demotion: An Employee who is involuntarily demoted as a result of disciplinary action may be placed in a new job position range and his/her salary reduced.
- d. Transfers: An Employee who transfers laterally to a classification with the same salary range shall retain his/her present salary placement.
- e. Employees who have reached Step 9 of their position's Salary Plan: Upon receiving an excellent performance evaluation, an employee who as reached Step 9 of their position's Salary Plan may be eligible for a 2.5% pay increase.

4.7 PAY PERIODS

The City operates on a biweekly pay period which shall commence on Monday and continue through the following second Sunday (two weeks). Employees shall receive pay for the prior two week pay period by 5 p.m. the following Thursday. If the Thursday is a holiday, the pay date will be the first business day preceding the holiday. The manner of distribution of paychecks will be determined by the City Administrator.

4.8 OVERTIME PAY

A. OVERTIME PAY FOR NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act (FLSA) stipulates that overtime compensation shall be paid to non-exempt Employees. All overtime must be authorized by the Supervisor in advance. Overtime pay will be administered as follows:

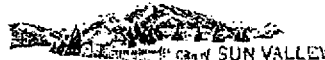
1. The Police Department work period shall be fourteen (14) days as allowed under FLSA. Overtime for nonexempt Employees will begin to accrue after eighty hour of work within the work period. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.
2. All other nonexempt Employees shall be entitled to overtime pay for work performed in excess of forty (40) hours per week. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.



3. The Employee may request to be granted compensatory time off without pay in lieu of receiving overtime pay consistent with the applicable FLSA regulations. This request must be made each time overtime hours are worked. The request should be directed to the Department Head, who may grant the request if time off would not pose a disruption of operations and the delivery of services. Compensatory time off will be at the rate of one and one-half hours off for each hour of overtime worked.
4. Compensatory time accrual will not exceed 40 hours for any Employee.

B. EXEMPT EMPLOYEE OVERTIME

It is anticipated that exempt Employees will work more than 2080 hours per year. Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so. Exempt Employees are not eligible for overtime compensation.



SECTION 5: BENEFITS

5.1 HOLIDAYS

The following eleven (11) holidays are observed: employee's birthday or anniversary, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, and New Year's Day.

Holidays which fall on a Saturday are taken on Friday; those which fall on a Sunday are taken on a Monday.

Police Officers are scheduled into eighty (80) hour rotations either for work or for a day off over fifty-two (52) weeks. Officers who have a regular scheduled day off on a holiday shall be provided eight hours of compensatory time off. Officers who are scheduled to work on a holiday will be compensated with one (1) hour of compensatory time off for each hour worked on the holiday.

Any other Employee who is called into work during a designated holiday, in addition to being paid for the holiday, shall be paid time and one-half for each hour worked on the holiday. Compensation shall be either cash or compensatory time off, at the discretion of the Department Head.

5.2 VACATION LEAVE

- A. The purpose of vacation leave is to allow the Employee extended rest and rejuvenation. Regular full-time Employees shall be provided annual vacation leave according to the following schedule:

<u>Years of Employment</u>	<u>Vacation Days</u>
Year 1	10
Years 2-7	15
Years 8+	20

- B. Regular part-time Employees shall be provided vacation leave according to the above formula in proportion to hours actually worked in a typical 40 hour work week.
- C. The following provisions apply to vacation leave:

1. Employees are required to take a minimum of 80 hours of vacation per year, unless approved otherwise by the Employee's Supervisor. Employees may begin taking accrued vacation time after six (6) months of employment.
2. Employees may accrue a maximum of one hundred (100) hours of vacation. When the Employee has accrued one hundred (100) hours of vacation leave,



the Employee will cease accruing vacation leave until his/her accrual balance falls below one hundred (100) hours. (Amended by Resolution 2007.06)

3. Vacation Leave Conversion: With the approval of the Employee's Supervisor and the City Administrator, up to forty (40) hours of vacation leave may be converted to cash payment at the Employee's straight time rate each calendar year only if the Employee has used an equal amount of vacation leave in the previous 12 month period; for administrative purposes, no more than two (2) requests for conversion during the calendar year will be allowed, and any hours of vacation leave counted in the first request for that year may not be counted in the second.
4. Paid holidays which occur during vacation leave will not be charged to vacation time.
5. Vacation must be scheduled and approved in advance with the respective Department Head, in order to ensure continued operation of City services.

5.3 SABBATICAL LEAVE

- A. The purpose of the sabbatical is to allow the Employee extended paid time off from work to pursue a personal or professional interest, including rest and relaxation.
- B. Employees will be entitled to fifteen (15) days of paid sabbatical leave after completion of the first three years of employment and every four (4) years of employment thereafter. The following provisions apply to sabbatical leave:
 1. The fifteen (15) days leave must be taken in the first year following each three year anniversary date or be forfeited, i.e., years 4, 8, 12, etc.
 2. There is no conversion of the sabbatical leave to cash payment at anytime including upon leaving the employment of the City prior to or during a sabbatical year. The sabbatical leave may be combined with other additional accrued vacation, if approved by the Supervisor. The sabbatical leave dates must be scheduled in consultation and with the approval of the Supervisor. It is expected that the fifteen (15) days of sabbatical leave will be taken as a single block of time off.

5.4 SICK LEAVE

Sick leave shall be a benefit to all regular full-time Employees as an assurance against a loss of income during the Employee's illness, injury, or disability when the Employee is unable to fulfill his/her job duties. Employees may also take sick leave to care for a member of the immediate family, including children, spouses and parents. Sick leave shall accrue at the rate of one day per month.



Sick Leave Accrual: Employees may accrue a maximum of 720 hours of sick leave. Sick time accruals are forfeited at the time of employment termination and there is no cash equivalent payment provided by the City.

Physician's Statement: The City may request a Physician's Statement for absences of more than three (3) days.

Duplication of benefits: Sick leave benefits are not to be drawn during such time as the Employee is drawing unemployment, workers' compensation, disability insurance, or any other similar benefits or payments, either from the City or from any other source except for personal, non-City related insurance benefits.

5.5 MEDICAL INSURANCE

The City provides to each Employee and his/her dependents a medical health insurance policy, which includes but is not limited to health and dental insurance. Due to the changing nature of medical insurance and the associated premiums, the current Medical Insurance Plan of the City will be on file with the Finance Manager/City Treasurer. Appendix A summarizes the current benefits and will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.6 FAMILY CARE AND MEDICAL LEAVE POLICY

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible Employees as required by federal and state law. Appendix B sets forth certain rights and obligations with respect to the Federal Family and Medical Leave Act of 1993 (FMLA).

5.7 LIFE INSURANCE

The City may provide each Employee a Life Insurance Policy. Appendix C summarizes any current benefit. The Appendix will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.8 WORKERS' COMPENSATION INSURANCE

All Employees are covered by workers' compensation insurance in accordance with state and federal law. An Employee who suffers a work related illness or injury should check with the City Administrator's office for further information.

5.9 STATE UNEMPLOYMENT INSURANCE, SOCIAL SECURITY BENEFITS AND PERSI

All Employees of the City are covered by these benefits in accordance with state and federal law. In addition, all regular Employees are covered by the Public Employees' Retirement System of Idaho (PERSI). Contributions are made by both the City and the Employee.



5.10 SECTION 457 DEFERRED COMPENSATION

All regular full-time Employees and regular part-time Employees who work more than thirty (30) hours per week are eligible to participate in the City's optional deferred compensation plan. This plan, governed by IRS (Section 457) and state law, provides for the Employee to defer a portion of his/her income before taxes through payroll deduction, and provides for a variety of investment options.

5.11 SPECIAL LEAVE

A. PROFESSIONAL DEVELOPMENT AND EDUCATIONAL

The City encourages and supports the continuing education and training of Employees. Job related training or education shall be approved in advance by the Employee's direct Supervisor, in consultation with the City Administrator, and shall include tuition, materials, and books. It shall be reimbursed to the Employee upon evidence of a passing grade. The approval of educational reimbursement is not automatic; it is a discretionary benefit. The intent of the educational reimbursement policy is to cover the cost of individual classes only, on an infrequent basis. This policy is not intended to cover the costs associated with the pursuit of associate, undergraduate, graduate, or professional degree programs. Educational reimbursement, per this section, is academic in nature and is distinct from job related training, workshops, seminars, classes and/or conferences.

B. MILITARY LEAVE

An Employee who is a member of the National Guard, or is in a reserve component of the Armed Forces of the United States, or of the Public Health Services, shall be entitled to a leave of absence from City service for a period not exceeding 15 calendar days in any one (1) calendar year period. Such leave shall be granted without loss of time, pay, or other benefits to which the Employee is entitled. When an Employee receives bona fide orders to temporary active or training duty, such military leave longer than 15 days in any calendar year shall be granted without City pay.

C. BEREAVEMENT LEAVE

Bereavement leave of three (3) days is authorized in case of a death in the immediate family. Immediate family is defined as spouse, child, parent, parent-in-law, brother or sister.

D. COURT APPEARANCE

Any Employee required to appear in court or before the Grand Jury as a juror, witness in a criminal case, or witness in a civil case for the purpose of giving testimony shall



receive full compensation as though he were actually on the job during such time. He/she shall claim any witness or other fee to which he/she may be entitled by reason of such appearance and pay the same over to the City Treasurer to be deposited in the general fund.

E. LEAVE OF ABSENCE WITHOUT PAY

City Employees may apply for a leave of absence without pay for illnesses not otherwise covered by the City's family/medical leave policy, emergencies, or other compelling reasons. The City Administrator will review the request and determine whether to approve the leave. All applicable leave balances (i.e., sick, vacation, compensatory) must be exhausted before the leave without pay begins.

1. Reinstatement: Except for a leave of absence without pay of less than 90 days duration, the Employee's position will not be held open. For leaves beyond 90 days duration, the Employee must apply for reinstatement and will then be reinstated into the first available position of a similar classification and pay as the position vacated.
2. Benefit accruals: No vacation, sick leave, retirement, or other benefits will be paid or accrued during periods of leave without pay.



SECTION 6: EMPLOYEE EVALUATION

6.1 EVALUATION PROCEDURES

A. STANDARD PROCEDURES

Full-time Employees shall receive a job performance evaluation at six months service and thirty (30) days prior to one year of service. Thereafter, performance evaluations shall be conducted annually at the Employee's anniversary date. With the approval of the City Administrator, the dates of performance evaluations may be extended when 1) the Employee's performance needs improvement, and the Supervisor, with the concurrence of the City Administrator, determines that it is in the best interest of the City and the Employee to grant an extension to allow for improvement; 2) the Employee is on a leave of absence without pay for more than 30 days; and 3) when circumstances indicate that the Employee has not had adequate time to demonstrate suitability for regular status or continued employment.

Each Employee will be evaluated to assess the performance of that Employee in the job being performed for the City. Each evaluation will be given on the basis of the direct Supervisor's observations of the Employee's performance, the accuracy of the Employee's work in addition to the quantity and quality of the work. Each Supervisor will seek the input of other City personnel and input, where appropriate, from others outside of the City workforce who have an on-going knowledge of the Employee's work.

1. The City Administrator shall provide to each Supervisor an appropriate Employee Appraisal Form.
2. The Supervisor shall perform the following:
 - a. Review the Employee's job description;
 - b. Review Employee's Goals from the previous appraisal period.
 - c. Complete the Employee Performance Appraisal Form
3. The Employee will also complete a self-evaluation on the Employee Performance Appraisal Form.

B. EVALUATION

Each evaluation shall conclude with a meeting between the evaluated Employee and the immediate Supervisor in which the Employee will be provided with the written evaluation prepared by the Supervisor. The Employee will be given an opportunity to respond to the evaluation. The Supervisor will establish performance goals for the Employee for the next year and detail any work improvements or continuing professional development needs of the Employee.



6.2 APPEAL

Any Employee shall have the right to appeal his/her performance evaluation to the City Administrator by submitting his/her concerns in writing. The City Administrator shall meet with the Employee to discuss the Employee's concerns. The City Administrator shall issue a written finding, either upholding the Employee's performance evaluation, or returning it to the Supervisor for changes or revision. Any written materials from this process shall become part of the Employee's personnel file. The City Administrator's written finding shall be final and there shall be no further right of appeal.



SECTION 7: STANDARDS OF CONDUCT

7.1 PURPOSE

This policy shall assure that all Employees are aware of important policies, procedures and regulations governing their employment with the City. In addition, the City expects that this policy shall ensure that Employees at all times conduct themselves in a manner that reflects favorably on the City and builds and supports the integrity and credibility of the City organization. Violation of any of the policies included in this Section may be grounds for disciplinary action, up to and including termination of employment, depending upon the severity of the violation.

7.2 SAFETY POLICY

Safety and health is the primary concern and responsibility of every Employee working for the City. The City recognizes its obligation to provide adequate safety equipment, to train Employees in safe operations and practices, and to establish and enforce safety regulations.

All Employees are obligated to perform their assigned duties safely by following established safe work procedures, using the proper safety equipment, and by reporting or correcting unsafe acts or workplace conditions.

7.3 CONFLICT OF INTEREST

City Employees are expressly prohibited from engaging in any activities which could represent a conflict of interest with their City employment.

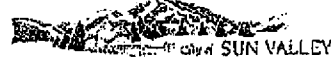
It is the responsibility of the Employee to notify his/her Department Head when the Employee's circumstances or work assignment change and create a situation wherein a conflict of interest may arise. The Department Head will notify the City Administrator in writing of the potential conflict. The City Administrator, in consultation with the City Attorney, shall make recommendation to the Mayor and Council as to what action should be taken to avoid the potential conflict of interest.

7.4 CONFIDENTIALITY OF RECORDS

Employees having access to confidential records such as personnel actions, medical records, payroll records, etc., shall maintain strict confidentiality of such records. City records may only be released or disseminated by the Mayor, City Administrator or City Clerk in accordance with the public records laws of the State of Idaho.

7.5 HARASSMENT POLICY

The purpose of this policy is to set forth the City's position prohibiting harassment by or against any of its Employees or applicants. The City's harassment policy is in keeping with the City's commitment to provide a work environment that is free of discrimination. The City prohibits

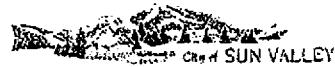


harassment in any form, including verbal, physical and visual harassment.

- A. Sexual harassment includes, but is not limited to, making unsolicited and unwelcome sexual advances, requests for sexual favors and/or other verbal, physical, or visual conduct of a sexual nature which occurs under the following circumstances:
 - 1. Submission to such conduct is explicitly or implicitly made a term or condition of employment; or
 - 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the Employee or applicant; or
 - 3. Such conduct has the purpose or effect of substantially interfering with the individual's performance and/or creating an intimidating, hostile or offensive work environment.
- B. Racial or ethnic harassment includes, but is not limited to, ethnic slurs, jokes or other verbal or physical conduct relating to an individual's race, national origin, or ancestry where such conduct:
 - 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
 - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - 3. Otherwise adversely affects an individual's employment opportunities.
- C. Also similarly prohibited is any form of harassment against a person because of that person's religious creed, physical handicap, medical condition, sexual orientation, marital status or age.

Guidelines:

- A. An Employee who believes that he or she has been harassed by a co-worker, Supervisor, any City official, or individual outside of the City organization, should immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.
- B. If the complaint is against the Employee's Department Head, the Employee should report it directly to the City Administrator. If the complaint is against the City Administrator, or a member of the City Council, the Employee should report the complaint to the Mayor. If the complaint is against the Mayor, the Employee should report it to the President of the Council.
- C. A Supervisor or Department Head who is notified of a complaint or otherwise becomes aware of a violation of this policy must immediately notify the City Administrator. Failure to do so may result in disciplinary action up to and including termination.
- D. Once an incident has been brought to the attention of management, an investigation will be conducted by the City Administrator's office or other person designated by the City Administrator or the City Council to determine all the facts surrounding the



incident including, but not limited to, the totality of the circumstances, the nature of the conduct, and the context in which the alleged incident occurred. The City has the right to retain an independent third party to conduct the investigation.

- E. If the complaint is against a patron of City services, the City will take those steps within its power to investigate and eliminate the problem.
- F. If a violation of this policy is found to have occurred, the Employee who is found to have violated this policy will be subject to discipline, up to and including termination.
- G. Retaliation: Retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited. Employees found to be retaliating against another Employee shall be subject to disciplinary action, up to and including termination.

7.6 SUBSTANCE ABUSE

The City maintains a "zero-tolerance" policy toward the use or possession of illegal substances and toward an Employee being impaired or incapacitated by alcohol or any other controlled substance.

The unauthorized possession, consumption, transfer or sale of any illegal drug shall be grounds for immediate disciplinary action.

An Employee may not, under any circumstances, report to work impaired by or under the influence of alcohol or any illegal or controlled substance. Any Employee who does report to work under the influence of alcohol or any illegal or controlled drug will be relieved of duty and subject to disciplinary action.

7.7 OUTSIDE EMPLOYMENT

The City Administrator shall have the authority to limit outside employment activities of City Employees when in his/her judgment that employment would create a potential conflict of interest, a potential breach of confidentiality on substantive matters of City business, or would have the potential to detrimentally affect the Employee's ability to perform for the City. Prior to engaging in outside employment, City Employees must submit a written request to the City Administrator who shall approve or deny the request within five working days.

7.8 PROPRIETARY RIGHTS

Any and all work products including software design, reports, and research analysis completed by City Employees while in the employ of the City are deemed to be the property of the City. No Employee may sell, copy, or otherwise use such information for outside economic gain without the express written consent of the City.



7.9 DRESS AND PERSONAL GROOMING

Employees shall at all times dress in a manner which reflects a professional image of the City. Clothing should reflect commonly accepted office standards and Employees should be well groomed at all times. Items including, but not limited to: halter tops, "spaghetti straps," extremely short shorts, spandex shorts, or worn or soiled jeans are neither appropriate nor acceptable during working hours. Employees in violation of this policy will be required to leave the premises and return in appropriate attire, and time taken to comply with this requirement will be at the Employee's own expense.

7.10 SMOKE-FREE WORK ENVIRONMENT

It is the policy of the City to create and maintain a safe and healthful work environment. Therefore, the City is a smoke-free workplace. Consistent with this policy, all City buildings and vehicles are designated no-smoking areas. Employees desiring to smoke may do so in offsite locations during their normal lunch or break periods.

7.11 GRATUITIES

No Employee shall accept any fee, gift, or other valuable item in the course of performing the duties of his/her position. Employees may accept such items as candy, cake, cookies, or other items of nominal value which are intended to be appreciative in nature and which are made available for general office consumption or use. Meal expenses related to the conduct of City business are exempt from this policy if approved in advance by the Department Head.



SECTION 8: DISCIPLINE

8.1 POLICY AND PURPOSE

The purpose of this policy is to establish a disciplinary system to assure a fair and consistent procedure for the prevention and correction of Employee performance deficiencies. It is the policy of the City to promote a positive discipline process wherein the objective is to assist the Employee to succeed in his/her responsibilities whenever possible.

8.2 SUPERVISORY RESPONSIBILITY

It is the responsibility of each Supervisor to identify, evaluate, and institute measures to correct performance deficiencies. Supervisors are expected to utilize the following strategies:

1. Communicate and explain the City's expectations and performance standards.
2. Communicate and explain the City's disciplinary policies.
3. Provide Employee training, recognition, and feedback on performance standards.
4. Conduct periodic performance reviews and appraisals.

8.3 APPLICABILITY

This policy shall apply to all regular full-time and regular part-time Employees. It shall not apply to the City Administrator, City Clerk, City Treasurer, City Attorney, or any seasonal or temporary Employees, paid call firefighters or volunteers.

8.4 CAUSES FOR DISCIPLINARY ACTION

Any action or inaction which is a hindrance to the effective performance of City operations, or reflects discredit upon the City or its Employees, will be considered just cause for disciplinary action. Disciplinary action may be taken for (but is not limited to) the following actions:

1. Violation of any City policy, rule, or regulation, contained in these Personnel Policies or in any other City communication of general distribution.
2. Violation of the Drug-Free Workplace Policy.
3. Violation of lawful duty.
4. Insubordination, including refusal to obey a reasonable order and promoting work unit insubordination.
5. Absence from the workplace without prior authorization (unexcused or excessive absenteeism).
6. Habitual tardiness or absences.
7. Abuse of sick leave benefits.
8. Failure to perform assigned work in an efficient and acceptable manner.
9. Abusive language or conduct toward the public or fellow Employees, or other conduct unbecoming a City Employee, including disrespect toward Supervisory or other authority, disorderly conduct, disregard or neglect of duties, abuse of



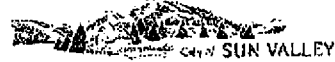
authority over other Employees, or on or off-duty conduct which may bring discredit to the City.

10. Being wasteful of City materials, property, or time.
11. Unacceptable interpersonal skills, to the extent that the workplace environment is below standard.
12. Conviction of a work related felony.
13. Use of religious, political, or fraternal influence for personal gain.
14. Theft.
15. Personal acceptance of a fee, gift, or other valuable item in the course of the employee's work for the City.
16. Release of confidential information.
17. Falsification of forms, records, or reports, including but not limited to time cards or job applications.
18. Participating in unlawful harassment toward any member of the City staff or the public, including but not limited to sexual or racial harassment.
19. Violation of safety laws, regulations, or guidelines.
20. Use of position, City property, or confidential City information for personal gain; or for the gain of others.

8.5 FORMS OF DISCIPLINARY ACTION

Disciplinary action may take any of the following forms, in any order, depending upon the seriousness of the infraction, the Employee's previous work history and longevity, and other relevant factors. Progressive discipline shall be applied only where the Supervisor believes that the potential for improvement and curative behavior is possible.

- A. Oral reprimand: An oral reprimand is a warning rather than a punitive action, and is designed to prevent the Employee from being placed in a position where formal discipline must be used. A Supervisor may make a brief note documenting the conversation and will retain the note for future reference. Documentation of an oral reprimand will not be placed in the Employee's personnel file.
- B. Written reprimand: A written reprimand is also intended to be a warning procedure; however, the written reprimand also serves to place the Employee on official notice that future abuse will result in a more severe form of disciplinary action. As such, the written reprimand will be placed in the Employee's personnel file.
- C. Suspension without pay: Suspension without pay is a form of discipline which is usually taken either after a written reprimand has failed to correct the performance deficiency or when the severity of the violation is such that it warrants a suspension without pay.
- D. Disciplinary probation: Disciplinary probation is a form of discipline which is usually taken when a written reprimand or suspension without pay have failed to correct the performance deficiency or when the severity of the violation is such that it warrants it. Disciplinary probation consists of placing an Employee back on



probationary status. The Employee loses regular status, and must bring his/her performance up to a "Standard" rating in order to regain regular Employee status.

- E. Salary reduction: A reduction in salary is the reduction of the Employee's salary to a lower step on the salary range to which his/her position is assigned. This form of discipline may be used for any length of time that the City Administrator deems appropriate, and is generally but not exclusively used when it is advantageous to have the Employee on the job but the seriousness of the violation or performance problem warrants more disciplinary action than a written reprimand.
- F. Involuntary demotion: A demotion to a lower classification may be used as a form of disciplinary action, when dismissal is not warranted, or when the Supervisor feels that the Employee has the potential for correcting the misconduct. When demotion to a lower classification occurs, the salary of the Employee will be equal to, or less than, the Employee's present salary, at the discretion of the Supervisor and City Administrator.
- G. Dismissal: Dismissal from City service may be necessary after other attempts to correct the performance deficiencies have failed or when the seriousness of the infraction is such that dismissal is warranted.

8.6 ADMINISTRATION OF DISCIPLINE

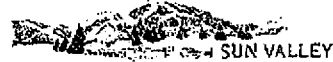
The following is a list of positions with the authority to impose discipline

- 1. The Employee's Supervisor may administer an oral reprimand and a written reprimand and recommend other levels of discipline.
- 2. Consistent with 8.7 below, the City Administrator will review and approve all recommendations for suspensions without pay, disciplinary probations, reductions in salary, involuntary demotions, and dismissals from City service.

8.7 INFORMAL REVIEW

A regular, full-time Employee shall have the right to an Informal Review regarding disciplinary actions consisting of suspension without pay, disciplinary probation, salary reduction, involuntary demotion, or dismissal from City employment within 5 working days after receiving notification of the proposed disciplinary action.

The following steps shall be followed in submitting and processing a request for an Informal Review. For purposes of this Informal Review process, the City Administrator shall be deemed to be the Department Head for all Employees. The Chief of Police shall be deemed to be the Department Head for the Police Department; the Fire Chief shall be deemed the Department Head for the Fire Department; and the Community Development Director shall be deemed the Department Head for the Community Development Department.

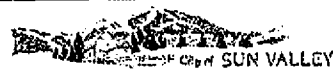


- Step 1: In disciplinary actions imposed by the Department Heads, the affected Employee may submit a request for an Informal Review of the disciplinary action to the City Administrator within five (5) working days after receiving notification of the proposed disciplinary action. The Department Head shall review the Employee's request for an Informal Review and provide to the City Administrator any and all relevant information regarding the proposed disciplinary action within three (3) days after notification of the Employee's request for an Informal Review.
- Step 2: The City Administrator shall meet with the affected Employee and the Department Head to review the reasons for the proposed disciplinary action and any relevant information the Employee desires to submit in connection with the disciplinary action or the information and/or events upon which the proposed disciplinary action is based.
- Step 3: Upon the conclusion of the Informal Review, the City Administrator shall prepare his decision in writing upholding, modifying, or rescinding the proposed disciplinary action.
- Step 4: If the affected Employee is dissatisfied with the decision of the City Administrator, then the Employee may request that the City Administrator's decision be informally reviewed by the Mayor within five (5) working days after receiving the City Administrator's decision. The Mayor shall meet with the City Administrator and the Employee, review the Employee's written material and relevant information regarding the proposed disciplinary action and provide his written decision within three (3) days after the meeting. The decision of the Mayor shall be final and binding.

In the event of disciplinary action proposed by the City Administrator acting in the capacity of the Department Head, such proposed disciplinary action shall be reviewed directly by the Mayor consistent with Step 4, above. The decision of the Mayor shall be final and binding.

If the request for an Informal Review is not initiated within the time limits established by this Section, then the right for an Informal Review shall be deemed to be waived. Any disciplinary action not taken to the next step of the Informal Review procedure within the time limits established by this Section shall be considered settled on the basis of the last decision made.

The time limits prescribed in this Section for the initiation and completion of the steps of the Informal Review procedure may be extended for a reasonable amount of time by the reviewing City Employee.



APPENDIX A

MEDICAL INSURANCE PLAN

CITY STAFF HEALTH REIMBURSEMENT ARRANGEMENT ANNUAL ROLLOVER AND PORTABILITY POLICY

Regence BlueShield of Idaho has been selected by the City of Sun Valley to provide health insurance for its full-time regular employees (at least thirty (30) hours or more per week). The Health insurance plan includes a Health Reimbursement Arrangement (HRA) program. Individual employee HRA accounts are established and annually the city appropriates funds to the HRA account to help pay for employee deductibles.

It is the City's policy that at the end of each fiscal year, any unused appropriation funds in an individual's HRA account may be rolled over into the next fiscal year. The maximum amount that may be rolled over each year is seventy percent (70%) of the remaining funds. The funds may be used in subsequent years for medical costs as authorized by Regence BlueShield.

Vesting of rollover funds occurs at the completion of three (3) years of full-time employment. Rollover funds will at that time become available as a profitability payment to an employee should the employee leave City employment. After year three (3), an employee, upon employment termination, will be provided a payment of up to \$1,500 of any vested rollover funds. At the end of five (5) or more years of employment, an employee will be entitled to payment of up to \$5,000 of any vested rollover funds.

An employee receiving a profitability payment may choose to either have the payment made as income and, therefore, subject to all applicable payroll taxes and payroll benefits or the employee may select that a payment or payments be made directly for another health insurance plan.

MAYOR & COUNCIL HRA PROGRAM

The Mayor and Council are full-time employees of the City and are eligible to receive health insurance benefits equal to those provided to other employees. In addition, the Mayor & Council may select to provide for their health insurance coverage through an existing health insurance program of their own or through a spouse's health insurance program. If one of these options is selected, the Mayor and/or Councilperson(s) may still participate in the City's Health Reimbursement Arrangement (HRA) program as follows:¹

¹The Mayor and Council are considered a unique class under this policy and, therefore, other employees are not eligible for this HRA Program.



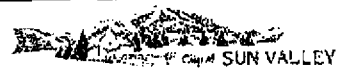
1. The City will establish an individual HRA account for the Mayor and/or Councilperson and contribute \$1,217.40 per month to the account. The maximum total contribution over a twelve month period is \$14,608.80 and the period of time will be from January 1 through December 31²
2. The HRA account may be used by the Mayor and/or Councilperson(s) for the reimbursement of their health insurance premiums and/or deductibles including all dependents on the program.
3. The Mayor and/or Councilperson(s) must present to ISC, the City's HRA account managers, acceptable proof of health insurance premium payment in order to be reimbursed (i.e. payroll documentation or premium invoice).
4. The Mayor and/or Councilperson(s) must present to ISC acceptable proof of deductible payment in order to be reimbursed (i.e. doctor's receipt or Explanation of Benefits (EOB) from health insurance provider.)
5. ISC will be responsible for verifying receipts and payroll deduction documentation and will make timely reimbursements for all eligible health insurance premium costs and deductibles and deductibles.

² The monthly and maximum annual City Contribution to the HRA accounts is calculated based upon the current per employee and dependent *premium costs* charged by Regence BlueShield of Idaho (Health Insurance) and MetLife (Dental Insurance) for City employees and the City's share of paid deductibles in the current 2004/05 health insurance policy.

Dental	Health
	Employee: \$ 263.00/month
\$ 25.80	Spouse: \$ 316.00/month
\$ 23.70	Children: \$ 354.00/month (or \$118/month/child up to 3 children) \$ 30.00
	Total per month: \$ 933.00
\$ 84.40 (family)	
	Total per year: \$ 11,196.00
\$1,012.80	
Plus: City Deductible Payment:	\$ 2,400.00
Total Annual HRA Account Contribution:	\$ 14,608.80
Total Monthly HRA Account Contribution:	\$ 1,217.40



6. The maximum total reimbursement for the twelve-month HRA period is \$14,608.80.
7. At the end of the twelve-month period, or at anytime that the elected term of the Mayor and/or Councilperson(s) should end, any remaining funds in the Mayor's or Councilperson(s) HRA account will revert back to the City and will be forfeited by the Mayor and/or Councilperson(s) if they do not have outstanding receipts to withdraw those funds. There is no rollover provision provided in this program.



APPENDIX B

FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Rights and obligations, which are not specifically set forth below, are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA.

A. Definitions

1. "12-month period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
An Employee's child is one for whom the Employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or stepchild.
3. A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
4. "Parent" means the biological parent or an Employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an Employee when the Employee was a child. This term does not include parents-in-law.
5. "Spouse" means a husband or wife as defined or recognized under Idaho State law for purposes of marriage.
6. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
 - b. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:



- i) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
- ii) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral, by a health care provider; or
- iii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

Any period of incapacity due to pregnancy or for prenatal care.

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The Employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

7. "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or



surgery by the State of Idaho;

- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of Manual manipulation of the spine to correct a subluxation as demonstrated by X-rays to exist) authorized to practice in Idaho and performing within the scope of their practice as defined under State law;
- 2) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- 3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 4) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

B. Reasons for Leave

Leave is only permitted for the following reasons:

- 1) The birth of a child or to care for a newborn of an Employee;
- 2) The placement of a child with an Employee in connection with the adoption or foster care of a child;
- 3) Leave to care for a child, parent, or a spouse who has a serious health condition; or
- 4) Leave because of a serious health condition that makes the Employee unable to perform the functions of his/her position.

C. Employee's Rights to Leave:

An Employee is eligible for leave if the Employee:

- 1) Has been employed for at least 12 months; and
- 2) Has been employed for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave.



D. Amount of Leave:

Eligible Employees are entitled to a total of 12 workweeks of leave during any 12-month period.

E. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the Employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an Employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions. If leave is requested to care for a child, parent, spouse or the Employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

1. Spouses Both Employed by the City

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12 month period if leave is taken for the birth or placement for adoption or foster care of the Employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

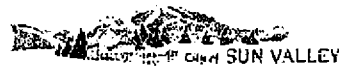
F. Employee Benefits While on Leave:

Leave under this policy is unpaid; however, the Employee may use sick, vacation, and/or compensatory time as determined by the City. While on leave, Employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the Employee is on the job.

If an Employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire period, unless the Employee does not return because of the continuation, recurrence, or onset of a serious health condition of the Employee or his/her family member which would entitle the Employee to a leave, or because of circumstances beyond the Employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid, wages, vacation pay, etc.).

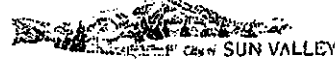
G. Substitution of Paid Accrued Leaves:

While on leave under this policy, as set forth herein, an Employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an Employee to concurrently use paid accrued leave after requesting FMLA leave, and may also require



an Employee to use Family and Medical Care Leave concurrently with a non-FMLA leave which is FMLA qualifying.

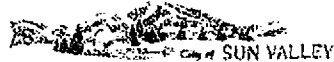
1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave: Where an Employee has earned or accrued paid vacation, administrative leave, compensatory time, or sick leave, that paid leave may be substituted for all or part of any otherwise unpaid leave under this policy.
2. As for sick leave, an Employee is entitled to use sick leave concurrently with leave under this policy if:
 - a) The leave is for the Employee's own serious health condition; or
 - b) The leave is needed to care for a parent, spouse, or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.
3. The City's Right to Require an Employee to Use Paid Leave When Using FMLA Leave: Employees must exhaust their accrued leaves concurrently with FMLA leave to the same extent that Employees have the right to use their accrued leaves concurrently with FMLA leave, with two exceptions:
 - a) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
 - b) Employees will only be required to use sick leave concurrently with FMLA leave if the leave is for the Employee's own serious health condition.
4. The City's Right to Require an Employee to Exhaust FMLA Leave Concurrently With Other Leaves: If an Employee takes a leave of absence for any reason which is FMLA qualifying, the City may designate that non-FMLA leave as running concurrently with the Employee's 12-week FMLA leave entitlement.
5. City's and Employee's Rights If an Employee Requests Accrued Leave Without Mentioning the FMLA: If an Employee requests to utilize accrued vacation leave or other accrued time off without reference to a FMLA qualifying purpose, the City may not ask the Employee if the leave is for a FMLA qualifying purpose. However, if the City denies the Employee's request and the Employee provides information that the requested time off is for a FMLA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA qualifying, the City may require the Employee to exhaust accrued leave as described above.
6. Medical Certification: Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by the City.



If the leave is requested because of the Employee's own serious health condition, the certification must include a statement that the Employee is unable to work at all or is unable to perform the essential functions of his/her position.

- a) Time to Provide a Certification: When an Employee's leave is foreseeable, and at least 30 days notice has been provided, if a medical certification is requested, the Employee must provide it before the leave begins. When this is not possible, the Employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the Employee's diligent, good faith efforts.
 - b) Consequences for Failure to Provide an Adequate or Timely Certification: If an Employee provides an incomplete medical certification, the Employee will be given a reasonable opportunity to cure any such deficiency. However, if an Employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA leave until the required certification is provided.
 - c) Recertification: The City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third party provider, jointly approved by the City and the Employee, but paid for by the City. The opinion of the third provider will be binding. An Employee may request a copy of the health care provider's opinions when there is a recertification.
7. Intermittent Leave or Leave on a Reduced Leave Schedule: If an Employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the Employee must provide medical certification that such leave is medically necessary. "Medically necessary" means that there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Employee Notice of Leave: Although the City recognizes that emergencies arise which may require Employees to request immediate leave, Employees are requested to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an Employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn) the Employee shall inform his/her Supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If the City determines that an Employee's notice may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.



Right to Reinstatement: Upon expiration of leave, an Employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the Employee had been continuously employed during the FMLA period.

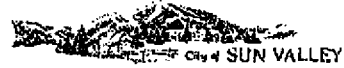
Reinstatement Upon Return from Leave: If a definite date of reinstatement has been agreed upon, at the beginning of the leave, the Employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the Employee and the City, the Employee will be reinstated within two business days, where feasible, after the Employee notifies the employer of his/her readiness to return.

Employee's Obligation to Periodically Report on His/Her Condition: Employees may be required to periodically report on their status and intent to return to work. This will help to avoid any delays to reinstatement when the Employee is ready to return.

Fitness for Duty Certification: As a condition of reinstatement of an Employee whose leave was due to the Employee's own serious health condition, which made the Employee unable to perform his/her job, the Employee must obtain fitness for duty clearance from his/her health care provider that the Employee is able to resume such work. Subsequent to obtaining such certification from his/her own health care provider, the Employee must present this certification to the City physician who will issue a return to work certification. Failure to provide such certification will result in denial of reinstatement.

Reinstatement of "Key Employees": The City may deny reinstatement to a "key" Employee (i.e., an Employee who is among the highest paid 10% of all Employees of the City within 75 miles of the worksite) if such denial is necessary to prevent substantial economic cost to the operations of the City, and the Employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

Required Forms: Employees must fill out or provide the following applicable forms in connection with leave under this policy. These forms should be submitted to the Employee's Supervisor, who will forward the request to the City Administrator's Office. Employees must complete a "Request for Family or Medical Leave Form" prepared by the City. NOTE: EMPLOYEES WILL RECEIVE A RESPONSE TO THEIR REQUEST FROM THE CITY, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE. Employees must also turn in a Medical certification -- either for the Employee's own serious health condition or for the serious health condition of a child, parent, or spouse, and must have on file an authorization for payroll deductions for benefit plan coverage continuation.



APPENDIX C

LIFE INSURANCE PROGRAM

United Heritage has been selected by the City of Sun Valley to provide life insurance for its full-time employees. Coverage for this insurance is provided by the City of Sun Valley and at no cost to employees. The amount of the life insurance provided is in the amount of \$50,000 per employee, however, the amount of the life insurance provided is reduced according to age once the employee reaches the age of 65.

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Email: kirt@naylorhales.com

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANTS' ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT
FOR DAMAGES AND DEMAND FOR
JURY TRIAL**

Defendants City of Sun Valley, Nils Ribi and DeWayne Briscoe by and through their attorneys of record, Naylor & Hales, P.C., answer Plaintiff's Amended Complaint for Damages and Demand for Jury Trial ("Plaintiff's Complaint") on file herein as follows:

1. Defendants deny each and every allegation contained in Plaintiff's Complaint not herein specifically and expressly admitted. Defendants reserve the right to amend this and any other answer or denial stated herein, once they have had an opportunity to complete discovery regarding the allegations contained in Plaintiff's Complaint.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 1.

2. Answering paragraph 1 of Plaintiff's Complaint, Defendants admit the allegations.

3. Answering paragraph 2 of Plaintiff's Complaint, Defendants admit only that the City of Sun Valley is a municipal corporation and political subdivision of the State of Idaho. The remainder of the allegations in this paragraph are legal conclusions, and to the extent any response is required, Defendants deny the same.

4. Answering paragraph 3 of Plaintiff's Complaint, Defendants only admit the first two sentences, and deny the remainder of the allegations.

5. Answering paragraph 4 of Plaintiff's Complaint, Defendants only admit the first three sentences, and deny the remainder of the allegations.

6. Answering paragraphs 5-6 of Plaintiff's Complaint, Defendants acknowledge that this Court has jurisdiction over properly pled matters involving Idaho Code Sections 6-901 and 6-910; however, in making this acknowledgment, Defendants do not admit that any such matters are actually properly pled in Plaintiff's Complaint, or that the facts set forth in Plaintiff's Complaint actually justify the exercise of such jurisdiction. To the extent this Court has jurisdiction over these matters venue is proper.

7. Answering paragraphs 7-14 of Plaintiff's Complaint, Defendants admit the allegations.

8. Answering paragraphs 15-16 of Plaintiff's Complaint, Defendants admit the allegations.

9. Answering paragraph 17 of Plaintiff's Complaint, Defendants deny the allegations.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 2.

10. Answering paragraph 18 of Plaintiff's Complaint, Defendants admit the existence of the Personnel Policies and Procedures Manual ("Manual") referenced therein, but deny that Exhibit 1 is a true and accurate copy of the Manual governing the City and its representatives at all times relevant hereto.

11. Answering paragraph 19 of Plaintiff's Complaint, Defendants only admit that other ethical rules and professional responsibilities have been adopted by the City Council. Defendants deny any violation of these ethical rules and professional responsibilities.

12. Answering paragraph 20 of Plaintiff's Complaint, Defendants admit the allegations.

13. Answering paragraph 21 of Plaintiff's Complaint, Defendants admit that Mr. King was supervised by the Mayor, but he was evaluated by the Mayor and the City Council.

14. Answering paragraph 22 of Plaintiff's Complaint, Defendants admit that Attorney King was the legal advisor of the City, but deny Plaintiff's characterization of his duties and obligations as contained in the remainder of the allegations.

15. Answering paragraph 23 of Plaintiff's Complaint, Defendants admit that Plaintiff was the City Administrator from June 1, 2008, until January 19, 2012.

16. Answering paragraph 24 of Plaintiff's Complaint, Defendants admit the allegations.

17. Answering paragraph 25 of Plaintiff's Complaint, Defendants state that the language of the Manual speaks for itself, and that the paragraph contains Plaintiff's legal conclusions and characterizations, and to the extent that any response is required, Defendants deny the same.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 3.

18. Answering paragraphs 26-28 of Plaintiff's Complaint, these paragraphs contain Plaintiff's legal conclusions and characterizations, and to the extent that any response is required, Defendants deny the same.

19. Answering paragraphs 29-31 of Plaintiff's Complaint, the document cited speaks for itself, and to the extent that any response is required, Defendants deny the same.

20. Answering paragraph 32 of Plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, Defendants reassert and incorporate by this reference their prior responses to all of such allegations.

21. Answering paragraphs 33-36 of Plaintiff's Complaint, Defendants deny the allegations.

22. Answering paragraph 37 of Plaintiff's Complaint, Defendants admit only that Mr. Willich solely placed Plaintiff on administrative leave pending a special investigation, and deny the remainder of the allegations.

23. Answering paragraph 38 of Plaintiff's Complaint, Defendants admit only that Mr. Willich returned Plaintiff from administrative leave, and deny the remainder of the allegations.

24. Answering paragraph 39 of Plaintiff's Complaint, Defendants admit the allegations.

25. Answering paragraphs 40-42 of Plaintiff's Complaint, Defendants deny the allegations.

26. Answering paragraph 43 of Plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, Defendants reassert and incorporate by this reference their prior responses to all of such allegations.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 4.

27. Answering paragraph 44 of Plaintiff's Complaint, Defendants admit the allegations, and add that Plaintiff also worked with members of the City Council on these matters.

28. Answering paragraphs 45-48 of Plaintiff's Complaint, Defendants deny the allegations.

29. Answering paragraph 49 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on April 16, 2009. Defendants deny the remainder of the allegations.

30. Answering paragraphs 50-55 of Plaintiff's Complaint, Defendants deny the allegations.

31. Answering paragraph 56 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on May 14, 2009. Defendants deny the remainder of the allegations.

32. Answering paragraphs 57-58 of Plaintiff's Complaint, Defendants deny the allegations.

33. Answering paragraph 59 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on July 9, 2009. Defendants deny the remainder of the allegations.

34. Answering paragraphs 60-61 of Plaintiff's Complaint, Defendants deny the allegations.

35. Answering paragraph 62 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on January 21, 2010. Defendants deny the remainder of the allegations.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 5.

36. Answering paragraphs 63-68 of Plaintiff's Complaint, Defendants deny the allegations.

37. Answering paragraph 69 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on March 23, 2010. Defendants deny the remainder of the allegations.

38. Answering paragraphs 70-73 of Plaintiff's Complaint, Defendants deny the allegations.

39. Answering paragraph 74 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on May 20, 2010. Defendants deny the remainder of the allegations.

40. Answering paragraph 75 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on June 3, 2010. Defendants deny the remainder of the allegations.

41. Answering paragraphs 76-77 of Plaintiff's Complaint, Defendants deny the allegations.

42. Answering paragraph 78 of Plaintiff's Complaint, Defendants admit the allegations.

43. Answering paragraphs 79-86 of Plaintiff's Complaint, Defendants deny the allegations.

44. Answering paragraph 87 of Plaintiff's Complaint, Defendants are presently without sufficient information upon which to admit or deny the allegations contained therein, and so deny the allegations at present for lack of knowledge, information or belief.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 6.

45. Answering paragraphs 88-90 of Plaintiff's Complaint, Defendants deny the allegations.

46. Answering paragraph 91 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on October 21, 2010. Defendants deny the remainder of the allegations.

47. Answering paragraphs 92-93 of Plaintiff's Complaint, Defendants deny the allegations.

48. Answering paragraph 94 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on November 18, 2010. Defendants deny the remainder of the allegations.

49. Answering paragraphs 95-96 of Plaintiff's Complaint, Defendants deny the allegations.

50. Answering paragraph 97 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on March 17, 2011. Defendants deny the remainder of the allegations.

51. Answering paragraphs 98-100 of Plaintiff's Complaint, Defendants deny the allegations.

52. Answering paragraph 101 of Plaintiff's Complaint, Defendants are presently without sufficient information upon which to admit or deny the allegations contained therein, and so deny the allegations at present for lack of knowledge, information or belief.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 7.

53. Answering paragraph 102 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on April 7, 2011. Defendants deny the remainder of the allegations.

54. Answering paragraphs 103-108 of Plaintiff's Complaint, Defendants deny the allegations.

55. Answering paragraph 109 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on April 21, 2011. Defendants deny the remainder of the allegations.

56. Answering paragraphs 110-114 of Plaintiff's Complaint, Defendants deny the allegations.

57. Answering paragraph 115 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on July 20, 2011. Defendants deny the remainder of the allegations.

58. Answering paragraph 116 of Plaintiff's Complaint, Defendants admit only that Mr. Ribi requested research regarding cable service contracts of similar municipalities in accordance with Mr. Willich's offer of staff resources for such research. Defendants deny the remainder of the allegations.

59. Answering paragraph 117 of Plaintiff's Complaint, Defendants deny the allegations.

60. Answering paragraph 118 of Plaintiff's Complaint, Defendants admit only that Mr. Willich and Attorney King met on August 2, 2011, and deny Plaintiff's characterization of this meeting.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 8.

61. Answering paragraph 119 of Plaintiff's Complaint, Defendants deny the allegations.

62. Answering paragraph 120 of Plaintiff's Complaint, Defendants admit only that a Sun Valley City Council Meeting was held on September 15, 2011. Defendants deny the remainder of the allegations.

63. Answering paragraphs 121-125 of Plaintiff's Complaint, Defendants deny the allegations.

64. Answering paragraph 126 of Plaintiff's Complaint, Defendants are presently without sufficient information upon which to admit or deny the allegations contained therein, and so deny the allegations at present for lack of knowledge, information or belief.

65. Answering paragraphs 127-130 of Plaintiff's Complaint, Defendants deny the allegations.

66. Answering paragraph 131 of Plaintiff's Complaint, Defendants admit that on November 10, 2011, a Special Executive Session of the Sun Valley City Council was called for November 11, 2011, and that this session was held on that date. Defendants deny the remainder of the allegations.

67. Answering paragraph 132 of Plaintiff's Complaint, Defendants deny the allegations.

68. Answering paragraphs 133-137 of Plaintiff's Complaint, Defendants admit that Mr. Willich and Attorney King met with Plaintiff, but deny Plaintiff's characterization of the meeting.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 9.

69. Answering paragraph 138 of Plaintiff's Complaint, Defendants admit only that Plaintiff's former legal counsel, Mr. Donoval, provided a letter to Mr. Willich, but deny the Plaintiff's characterization of the letter and its contents.

70. Answering paragraph 139 of Plaintiff's Complaint, Defendants state that Plaintiff's allegations contain privileged information, and to the extent that any response is required, deny the allegations.

71. Answering paragraph 140 of Plaintiff's Complaint, Defendants admit that Plaintiff was placed on paid administrative leave on November 18, 2011 by Mr. Willich, but deny the remainder of the allegations.

72. Answering paragraph 141 of Plaintiff's Complaint, Defendants admit only that the Plaintiff's original IPPEA lawsuit was filed on November 21, 2011. Defendants deny the remainder of the allegations.

73. Answering paragraph 142 of Plaintiff's Complaint, Defendants deny the allegations.

74. Answering paragraph 143 of Plaintiff's Complaint, Defendants admit that the special investigation was concluded and that Mr. Willich requested that she return to work. Defendants deny the remainder of the allegations.

75. Answering paragraphs 144-145 of Plaintiff's Complaint, Defendants admit the allegations.

76. Answering paragraph 146 of Plaintiff's Complaint, Defendants admit only that Plaintiff was placed back on paid administrative leave on January 5, 2012.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 10.

77. Answering paragraph 147 of Plaintiff's Complaint, Defendants admit that Plaintiff was terminated without cause by unanimous vote of the Sun Valley City Council on January 19, 2012.

78. Answering paragraph 148 of Plaintiff's Complaint, Defendants deny the allegations, because she was terminated without cause pursuant to the provision in her employment agreement allowing for termination without cause.

79. Answering paragraph 149 of Plaintiff's Complaint, Defendants admit that a publication was placed in the Idaho Mountain Express, but deny Plaintiff's characterizations of that press release.

80. Answering paragraph 150 of Plaintiff's Complaint, Defendants admit only the City issued press releases regarding resolution of claims made by other employees. Defendants deny Plaintiff's characterization of these press releases.

81. Answering paragraph 151 of Plaintiff's Complaint, Defendants deny the allegations.

82. Answering paragraph 152 of Plaintiff's Complaint, Defendants admit that Mr. Ribi has a website and a personal blog, but deny the remainder of the allegations and Plaintiff's characterization of the content of Mr. Ribi's blog.

83. Answering paragraph 153 of Plaintiff's Complaint, Defendants deny the allegations.

84. Answering paragraph 154 of Plaintiff's Complaint, which purports to repeat and incorporate prior allegations, and to the extent any response is required to such allegations, Defendants reassert and incorporate by this reference their prior responses to all of such allegations.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 11.

85. Answering paragraph 155 of Plaintiff's Complaint, Defendants admit the allegations.

86. Answering paragraphs 156-160 of Plaintiff's Complaint, Defendants deny the allegations.

87. Answering paragraphs 161-163 of Plaintiff's Complaint, Defendants admit the allegations, but clarify in paragraph 162 that Plaintiff was placed back on paid administrative leave on January 5, 2012..

88. Answering paragraphs 164-172 of Plaintiff's Complaint, Defendants deny the allegations.

89. Responding to Plaintiff's paragraph entitled, "Attorney Fees and Costs," Defendants deny the allegations.

90. Responding to Plaintiff's paragraph entitled, "Demand for Jury Trial," Defendants have no current objection to a jury trial on these issues.

91. Responding to Plaintiff's paragraph entitled "Notice of Reservation of Right to Amend," Defendants reserve any right to object to Plaintiff's prospective motions to amend as they are made.

92. Plaintiff's Complaint last contains Plaintiff's "Demand for Judgment for Relief," and to the extent any answer is required thereto, these Defendants deny the allegations contained therein, deny that the Plaintiff has stated any valid cause of action, or that the Plaintiff is entitled to any of the relief requested therein.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 12.

FIRST DEFENSE

Defendants have not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in the Plaintiff's Complaint and therefore request the Court to permit Defendants to amend their Answer and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

SECOND DEFENSE

That the Plaintiff's Complaint fails to state a cause of action against the Defendants upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

THIRD DEFENSE

That some or all of the Plaintiff's claims are barred by the doctrine of estoppel.

FOURTH DEFENSE

That some or all of the Plaintiff's claims are barred by payment.

FIFTH DEFENSE

That some or all of the Plaintiff's claims are barred by release.

SIXTH DEFENSE

That some or all of the Plaintiff's claims are barred by waiver.

SEVENTH DEFENSE

That the Plaintiff's injuries and damages, if any, were proximately caused by the negligent or careless misconduct and acts or omissions of other persons or entities not parties to this action, for whom the Defendants have no legal relationship with or responsibility.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 13.

EIGHTH DEFENSE

That the Plaintiff has failed to act reasonably or to otherwise mitigate Plaintiff's damages, if any.

NINTH DEFENSE

That the Plaintiff is estopped to assert the claims and damages alleged in her Complaint by reason of her knowledge of the facts and circumstances regarding the transactions and events at issue and her conduct throughout the transactions and events, which conduct has been relied upon by the Defendants to their detriment.

TENTH DEFENSE

That the allegations contained in the Plaintiff's Complaint do not rise to the level of a deprivation of rights which are protected by the Constitution or any of the legal provisions referred to in the Plaintiff's Complaint.

ELEVENTH DEFENSE

That the named Plaintiff's causes of action for declaratory or injunctive relief are improper at this time, because the named Plaintiff has stated a claim for damages in her Complaint and therefore has acknowledged that she has an adequate remedy at law.

TWELFTH DEFENSE

That the allegations contained in the Plaintiff's Complaint regarding her complaint for declaratory and injunctive relief do not allege or show sufficient evidence of the existence of a reasonable likelihood of success.

THIRTEENTH DEFENSE

That the allegations contained in the Plaintiff's Complaint regarding her request for declaratory and injunctive relief do not show or sufficiently allege the existence of immediate or irreparable injury.

FOURTEENTH DEFENSE

That the Plaintiff's damages, if any, were proximately caused by the Plaintiff's own negligence (which negligence was equal to or greater than that, if any, of the Defendants), careless or criminal misconduct, thereby precluding any recovery by the Plaintiff.

FIFTEENTH DEFENSE

That the Defendants acted in a reasonable and prudent fashion satisfying any duty, if any, that they owed under the rules, regulations, statutes, ordinances, customs, policies and usages of the City of Sun Valley, the County of Blaine, the State of Idaho and/or the United States of America.

SIXTEENTH DEFENSE

To the extent that the Plaintiff is asserting state law claims against Defendants, some or all of such claims are barred by the failure of the Plaintiff to comply with the Idaho Tort Claims Act.

SEVENTEENTH DEFENSE

To the extent that the Plaintiff is asserting state law claims, the liability, if any, of the Defendants for any state law claims or causes of action is limited pursuant to the provisions of the Idaho Tort Claims Act. In asserting this defense, Defendants are in no way conceding or admitting liability.

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 15.

EIGHTEENTH DEFENSE

To the extent that the Plaintiff is asserting state law claims against the Defendants, some or all of such claims are barred since they arise out of and/or stem from activities for which the Defendants are immune from liability by virtue of the provisions of the Idaho Tort Claims Act.

ATTORNEY FEES

Defendants have been required to retain attorneys in order to defend this action and are entitled to recover reasonable attorney fees pursuant to federal and state law and applicable Rules of Civil Procedure.

WHEREFORE, Defendants pray for judgment against the Plaintiff as follows:

1. That the Plaintiff's Complaint be dismissed with prejudice and that the Plaintiff take nothing thereunder.
2. That the Defendants be awarded their costs, including reasonable attorneys' fees pursuant to I.C. § 6-2107, § 12-120, or § 12-117, and Rule 54(d)(1) of the Idaho Rules of Civil Procedure.
3. That judgment be entered in favor of Defendants on all claims for relief.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 7th day of January, 2013.

NAYLOR & HALES, P.C.

By 

Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

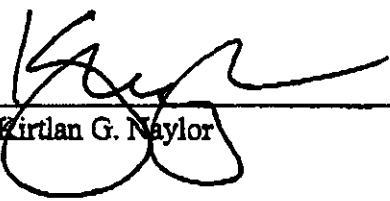
DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 16.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

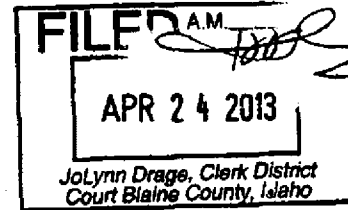
Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☒ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com


Kirtlan G. Naylor

M:\CRM\PI\Hammer v. Sun Valley\Pleadings & Cases\CV12-479 (Hammer WB 2012)\8406_02 Answer.wpd

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT - 17.



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

Sharon R. Hammer

Plaintiff,

v.

City of Sun Valley; Nils Ribí; and
DeWayne Briscoe,

Defendants.

)
) Case No. CV-2012-479
)

) **MEMORANDUM DECISION**
) **DENYING DEFENDANTS'**
) **MOTION FOR COSTS OF**
) **PREVIOUSLY DISMISSED**
) **ACTION PURSUANT TO I.R.C.P.**
) **41(d)**
)
)
)

FACTUAL & PROCEDURAL BACKGROUND

On February 8, 2013, the defendants filed a Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d) asking for an order of costs in the amount of \$2,055.99, and to stay this case until those costs are paid by the plaintiff. The basis for such an award is that the plaintiff filed a previous case (Blaine County Case No. CV-2011-928) against the City of Sun Valley, Nils Ribí, and others not named as defendants in the current case. The previous case was

**MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY
DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)**

voluntarily dismissed by the plaintiff on January 12, 2012. This case was filed on June 29, 2012. In the time period between the cases the plaintiff retained new counsel. The plaintiff alleges, in both this case and the previous case, a violation of the Idaho Protection of Public Employees Act (IPPEA).

The defendants argue that the Court should award costs pursuant to I.R.C.P. 41(d), which provides:

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

I.R.C.P. 41(d). There are a few issues before the Court. One issue is whether the requirements of the rule are met. Specifically, the issue is whether the present case includes the "same claim against the same defendant" as the previous case. Another issue raised by the defendants in briefing is whether "costs" include attorney fees. Before either issue is addressed, it is prudent to examine whether awarding costs would be appropriate given the circumstances of this case and the rationale underlying I.R.C.P. 41(d).

The Court heard oral argument from counsel for plaintiff and defendants on April 16, 2013. For the following reasons, the defendants' motion is denied.

LEGAL STANDARD

I.R.C.P. 41(d) indicates that a court "may" order that costs be paid for a previously dismissed action. *Id.* Therefore, the decision to award costs in this instance is discretionary with the Court. *Zucker v. Katz*, 708 F.Supp 525, 539 (S.D.N.Y 1989) (commenting on the similarly worded federal rule). When a matter is within a court's discretion the court must correctly

MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)

perceive the issue as discretionary, act within the boundaries of its discretion and consistent with the applicable legal standards, and reach its determination through an exercise of reason. *Richard J. and Esther E. Wooley Trust v. DeBest Plumbing, Inc.*, 133 Idaho 180, 187, 983 P.2d 834, 841 (1999).

ANALYSIS & DISCUSSION

I.R.C.P. 41(d) is modeled after F.R.C.P. 41(d). Therefore, to understand the rationale behind the Idaho rule, the rationale behind the federal rule can be examined. The primary purposes of F.R.C.P. 41(d) are to prevent forum shopping, and to prevent litigants from dismissing and refiling actions when it becomes apparent that a favorable judgment is not likely in the initial case. See Thomas Southard, *Increasing the "Costs" Nonsuit: A Proposed Clarifying Amendment to Federal Rule of Civil Procedure 41(d)*, 32 Seton Hall L. Rev. 367, 367-68 (2002). If a plaintiff has good reason for dismissing the prior case, a court is within its discretion in refusing to award costs. *Zucker*, 708 F.Supp at 539-40. In this case, the plaintiff argues that she dismissed the prior action because she believed that a settlement could be obtained. Counsel for both parties indicated that settlement negotiations did take place following the dismissal of the first case, though these negotiations were fruitless. The defendants argue that there were other reasons why the plaintiff may have dismissed the previous action, including an attempt by plaintiff's prior counsel to avoid sanctions.

There are a few reasons why it is inappropriate, given the rationale behind the rule, why to award costs in this case. The first is that this case was not filed in different forums. It was filed in Blaine County in both instances. Therefore, there is little indication that the plaintiff was engaging in impermissible forum shopping. Moreover, because settlement negotiations took

MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)

place, there is reason to believe that at least part of the reason the plaintiff dismissed the case was because she believed that such negotiations might be fruitful. The case was also dismissed at a relatively early stage. There was a hearing on injunctive relief, but regardless of the outcome of that hearing, the case was nowhere close to conclusion.

An additional reason that an award of costs is inappropriate is because the behavior about which the defendants complain was engaged in by the plaintiff's previous attorney. The defendants argue that the "prior litigation was unusually burdensome and onerous" given its short duration. Defendants' Motion for Costs for Previously Dismissed Action Pursuant to I.R.C.P. 41(d), 3. Specifically, the defendants complain about the "constant correspondence from [p]laintiff's counsel", and that the plaintiff filed multiple "unwarranted" motions. *Id.* Since that time, the plaintiff has retained new counsel, and the plaintiff is no longer employed by defendant Sun Valley. It would be inappropriate to sanction the plaintiff for the conduct of her counsel in the previous case without a strong indication that the plaintiff dismissed the case for forum shopping reasons, or because the plaintiff feared an unfavorable result. There is no such showing in this case. As noted above, the defendants argue the possibility that one of the reasons the case was dismissed was so that the plaintiff's attorney could avoid sanctions. Even if true, the plaintiff should not be punished for her prior attorney's attempt to avoid sanctions.

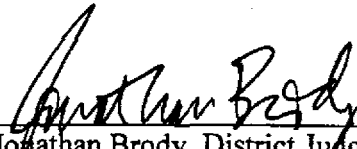
Even if costs were appropriate to order, attorney's fees would not be granted. Some federal courts construing the federal rule have allowed fees to be awarded. Expanding the language of the rule is not this Court's function.

MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)

CONCLUSION

For the foregoing reasons, it is hereby ORDERED that the defendants' Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d) is DENIED.

Dated this 23 day of April, 2013.


Jonathan Brody, District Judge

MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY
DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)

CERTIFICATE OF SERVICE

Andrea Logan
I, ~~Crystal Rigby~~, Deputy Clerk for the County of Blaine, do hereby certify that on the 24 day of April, 2013, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d) to each of the persons as listed below:

Eric B. Swartz
Joy M. Vega
PO Box 7808
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

Kirtlan G. Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Ste. 610
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

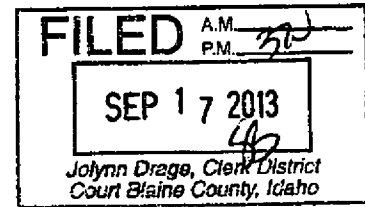
Jolynn Drase
CLERK OF THE DISTRICT COURT

BY: Andrea Logan

~~Crystal Rigby~~ Andrea Logan
Deputy Clerk

MEMORANDUM DECISION DENYING DEFENDANTS' MOTION FOR COSTS OF PREVIOUSLY DISMISSED ACTION PURSUANT TO I.R.C.P. 41(d)

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com



Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANTS' MOTION TO
DISMISS**

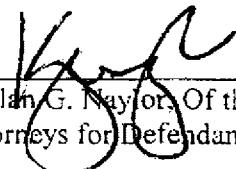
Defendants, by and through their counsel, Naylor & Hales, P.C., hereby move the Court to dismiss the individually named defendants Nils Ribi and DeWayne Briscoe from the current action, pursuant to I.R.C.P. 12(b)(6). This motion is supported by Defendants' Memorandum in Support and the Affidavit of Kirtlan G. Naylor, filed concurrently herewith.

DEFENDANTS' MOTION TO DISMISS - 1.

DATED this 17th day of September, 2013.

NAYLOR & HALES, P.C.

By


Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

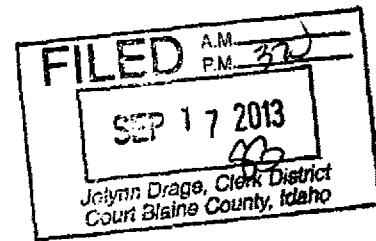
☐ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 489-8988
☒ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com


Kirtlan G. Naylor

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DEFENDANTS' MOTION TO DISMISS - 2.

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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

Defendants, by and through their counsel, Naylor & Hales, P.C., hereby submit their Memorandum in Support of their Motion to Dismiss the Plaintiff's Complaint. For the reasons set forth below, and pursuant to I.R.C.P. 12(b)(6), the Motion should be granted and the individually named Defendants Ribi and Briscoe should be dismissed from Plaintiff's Amended Complaint for failure to state a valid legal claim.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 1.

BACKGROUND

The Plaintiff, Sharon Hammer, has brought suit against Defendants City of Sun Valley, Councilmember Nils Ribi, and Mayor DeWayne Briscoe for retaliatory discharge in violation of the Idaho Protection of Public Employees Act. (Amended Complaint, ¶¶ 1-4, 154-172) Plaintiff has named Defendants Briscoe and Ribi in their individual capacities. (Amended Complaint, p. 1) A plain and clear reading of Plaintiff's Amended Complaint sets forth that Plaintiff's employer was the City of Sun Valley, a governmental entity, and that Defendants Ribi and Briscoe were elected officials, or agents, of the City of Sun Valley. Pursuant to I.C. § 6-2101, *et. seq.*, there is no individual liability for a cause of action brought under the Idaho Whistleblower Act. Thus, naming these defendants in their individual capacities is unsupported by statute or legal precedent and these individually named defendants should be dismissed for Plaintiff's failure to state a legal claim against these defendants pursuant to I.R.C.P. 12(b)(6)

ARGUMENT

To survive an I.R.C.P. 12(b)(6) motion to dismiss, a complaint does not need to plead enough facts to prove plaintiff's case, but must rather "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct.1955, 1958 (2007).¹ Here, while Plaintiff has made sufficient allegations to meet this standard with respect to her claim of retaliatory

¹ The use of Federal cases in order to establish the legal standard for a Rule 12(b)(6) motion to dismiss is appropriate. The Idaho Supreme Court has stated that Idaho has adopted the Federal Rules of Civil Procedure in order to interpret Idaho procedure as uniformly as possible with the federal cases, in order to "establish a uniform practice and procedure in both the federal and state courts in the State of Idaho." *Chacon v. Sperry Corp.*, 111 Idaho 270, 275, 723 P.2d 814, 819 (1986).

discharge against Defendant City of Sun Valley, there is no Idaho precedent or statutory authority to impose liability against individuals for violations of the Idaho Whistleblower Act, and thus Plaintiff has failed to state a valid legal claim against individually named Defendants Nils Ribi and DeWayne Briscoe. Dismissal of these individually named defendants is therefore warranted under I.R.C.P. 12(b)(6).

A. Defendants Nils Ribi and DeWayne Briscoe Must Be Dismissed From This Proceeding Pursuant to the Nature of the Idaho Whistleblower Act

As Defendants Ribi and Briscoe are agents of the City of Sun Valley, and are not an employer as defined by I.C. § 6-2103(4)(b), Plaintiff cannot name these defendants in their individual capacities because the Idaho Whistleblower Act does not create a cause of action against individuals but only governmental entities. The Idaho Whistleblower Act, as a whole, is inconsistent with individual liability. The purpose of the "agent" language set forth in I.C. § 6-2103(4)(b) serves as a mechanism by which *respondeat superior* liability attaches to the state of Idaho and other governmental employers. The Whistleblower Act provides "a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation." I.C. § 6-2101 (emphasis added). "Employer" means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system. . . ." I.C. § 6-2103(4)(a) (internal citation omitted). An agent of the employer is statutorily included in the definition of "employer," and there is no provision for an agent of the employer to have any sort of individual liability apart from that of the employer. I.C. § 6-2103(4)(b). Thus, while a whistleblower claim is valid against a political subdivision or governmental entity, there is no validity to bring such a claim against an individual agent of that governmental

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 3.

entity. As Plaintiff has only alleged a wrongful termination pursuant to violation of the IPPEA, sole liability would only be available against the City of Sun Valley as her requisite "employer."

In particular, Idaho's Whistleblower Act provides for several forms of relief for employees who win favorable judgments against their respective employers without need for individual liability. I.C. § 6-2106. For example, I.C. § 6-2106 provides that employees may be entitled to "any or all" of the following forms of relief: "an injunction to restrain continued violation of [the Whistleblower Act]," "reinstatement of the employee to the same position held before the adverse action," and "reinstatement of full fringe benefits and seniority rights." I.C. § 6-2106. The fact that only the state of Idaho or other governmental entities could grant the relief afforded by the Idaho Whistleblower Act further supports the idea that the legislature did not intend for supervisory employees or managers to be individually liable under the act. See *Abbamont*, 138 650 A.2d at 964; *Alejandro*, 131 S.W.3d at 668-69. By providing that an aggrieved employee may be awarded "any and all" of the relief allowed under the Idaho Whistleblower Act without individual or supervisor liability, the legislature clearly intended to afford an aggrieved party all the relief allowed under the act from the governmental entity itself.

Based on the allegations in Plaintiff's Amended Complaint, she incorrectly seems to argue that the legislature intended to define every public sector supervisory employee in Idaho as an "employee," and hence place each at risk of personal liability whenever he or she makes a personnel decision that could later be considered in violation of the Idaho Whistleblower Act. However, other courts across the country have preeminently adopted the interpretation that the "agent" language similar to that found in I.C. § 6-2103(4)(b) is only intended to ensure that employers will be held liable if their supervisory employees

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 4.

violate a whistleblower act, and that employers cannot avoid liability by arguing that a supervisor failed to follow instructions or deviated from the employer's policy.

In interpreting parallel federal and state whistleblower statutes,² nearly all other jurisdictions hold that similar definitions of "employer" and "agent" do not create a cause of action against individuals. Rather, "the 'agent' language is used to incorporate the theory of *respondeat superior*, rather than [to] expose either supervisors or co-workers to personal liability in employment discrimination cases." *Obst v. Microtron, Inc.*, 588 N.W.2d 550, 553, 554 (Minn. Ct. App. 1999) (internal quotation omitted); see *Wathen v. General Electric Co.*, 115 F.3d 400, 406 (6th Cir.1997). The California Supreme Court observed that:

[S]ince 1993, eight federal circuits have either (1) held that the "agent" language does not create individual liability for discrimination, or (2) found that, although individuals can be sued in their official or representative capacity, they may not be sued in their individual capacity and have no personal liability, or (3) interpreted similar language in a state statute as not creating individual liability.

² Due to the nearly-identical elements of proof set forth in state whistleblowing statutes and federal cases involving retaliatory discharge claims arising under Title VII of the Civil Rights Act of 1964, 29 U.S.C. §§ 2000 *et seq.*, federal and state courts analyze the two claims in virtually the same manner. Compare *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054 (9th Cir. 2002) with *Van v. Portneuf Medical Center*, 147 Idaho 552 (2009). Moreover, the Idaho Whistleblower Act shares similar language as a number of federal employment laws in defining the term "employer." See, e.g., Title VII, 29 U.S.C. § 2000e(b); Age Discrimination in Employment Act, 29 U.S.C.A. § 621(b); Americans with Disabilities Act, 42 U.S.C. § 12111(5)(A) (all stating that "'employer' means a person engaged in an industry affecting commerce . . . [and] *any agent* of such person") (emphasis added). Thus, all of these federal employment laws are both helpful and applicable in determining the scope of similar language in Idaho's Whistleblower Act because "all the definitions of employer in these statutes are worded to cover the 'agent' of the employer." *Reno v. Baird*, P.2d 1333, 1337 (Cal. 1998).

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 5.

Reno v. Baird, P.2d 1333, 1337 (Cal. 1998). More specifically, the California Supreme Court indicated that the Courts of Appeal of the Second, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all explicitly held that the "agent" language found in federal employment discrimination laws do not impose personal liability upon supervisory employees. *Id.* at 1337-40 (citing *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313-14 (2d. Cir. 1995); *Birkbeck v. Marvel Lighting Corp.*, 30 F.3d 507 (4th Cir. 1994); *Grant v. Lone Star Co.*, 21 F.3d 649, 651-53 (5th Cir. 1994); *United States Equal Employment Opportunity Commission v. AIC Security Investigations, Ltd.*, 55 F.3d 1276 (7th Cir. 1995); *Lenhardt v. Basic Institute of Technology, Inc.*, 55 F.3d 377 (8th Cir. 1995); *Miller v. Maxwell's Intern, Inc.*, 991 F.2d 583 (9th Cir. 1993); *Saucers v. Salt Lake County*, 1 F.3d 1122 (10th Cir. 1993); *Cross v. State of Alabama*, 49 F.3d 1490, 1504 (11th Cir. 1995)).

Other federal and state courts that have reviewed this issue have agreed with the California Supreme Court's assessment and determined that whistleblower and employment discrimination schemes do not create individual liability for supervisors. *United States ex rel. Lamar v. Burke*, 894 F.Supp. 1345 (E.D.Mo.1995) (holding that since Title VII's definition was broader and yet did not impose individual liability on supervisors, the narrower, ordinary and natural meaning of employer for purposes of the False Claims Act did not impose individual liability on employee/supervisors); *Palladino v. VNA of Southern New Jersey, Inc.*, 68 F.Supp.2d 455 (D.N.J.1999) (holding that corporate officers and supervisors were not subject to individual liability under the federal False Claims Act because the Act prohibited discrimination with respect to employment conditions and only an employer could logically grant the relief made available); *Janken v. GM Hughes Electronics*, 53 Cal.Rptr.2d 741, 747 (Cal. 1996) (rejecting individual liability and stating the agent language was intended to "ensure that employers will be

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 6.

held liable if their supervisory employees take actions later to be found discriminatory, and that employers cannot avoid liability by arguing that a supervisor failed to follow instructions or deviated from the employer's policy"); *Obst v. Microton, Inc.*, 588 N.W.2d 550 (Minn. Ct. App. 1999) (declining to hold individuals liable under Minnesota's whistleblower statute); *Alejandro v. Robstown Independent School District*, 131 S.W.3d 663, 668 (Tex. Ct. App. 2004) (holding that there is no private right of action against the superintendent or members of the board of trustees in their individual capacities because the "Act creates a private cause of action against the employing 'state or local governmental entity'").

For example, in *Abbamont v. Piscataway Township Board of Education*, 138 650 A.2d 958 (N.J. 1994) the New Jersey Supreme Court rejected individual liability under its whistleblower provisions, which contained a definition of employer similar to the definition in Idaho's Act. *See Id.* at 963 (stating that under New Jersey's Whistleblower Act, "an employer can be any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent"). The Court noted that the employer was the "party with the power and responsibility . . . to take . . . remedial action" under the statute and "that to fulfill the remedial purposes of . . . [the act], employers should be strictly liable for equitable relief in the nature of reinstatement, restoration of back pay and the like." *Id.* at 964 (citation omitted).

However, even alleged acts by "agents" acting outside the course and scope of their employment cannot overcome the clear statutory intent in a whistleblower act "Retaliatory Discharge" claim (as Plaintiff have titled the only Count in the state court complaint). The retaliation claimed was Hammer's discharge, and the City of Sun Valley was the only "employer" for purposes of discharge. It would be improbable to allege that her termination, which is the basis for her entire claim, was somehow effectuated

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 7.

for her entire claim, was somehow effectuated "outside the course and scope" of the duties of Defendants Ribi and Briscoe. There is no feasible way that a non-constructive termination can be executed outside of the course and scope of employment of supervisors. While Plaintiff makes allegations involving a wide range of irrelevant factual context, and while she may allege that some of these occurred outside the course and scope of the individually named defendants' employment, she has only brought a discrete claim of a retaliatory discharge, and so it is the discharge itself which is the only claim at issue. There is no case law that supports a finding of individual liability for a retaliatory discharge.

ATTORNEYS FEES

Attorney fees and costs should be granted in the filing and pursuing of this motion pursuant to I.R.C.P. 11(a)(1). Plaintiff's counsel filed the Complaint in this action naming individuals without any basis in law. Further, Defense Counsel put Plaintiff's counsel on notice of the legal inadequacy of her pleading on July 29, 2013, after the Amended Complaint was filed and allowing for Plaintiff to voluntarily dismiss these individuals, but Plaintiff took no corresponding action. (See Affidavit of Kirtlan G. Naylor ¶¶ 3-4)

The only apparent reason for this frivolous naming of certain city officials was to put them to unwarranted public scrutiny.

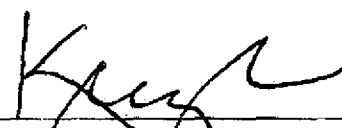
CONCLUSION

For the reasons set forth above, the individually named Defendants Ribi and Briscoe in Plaintiff's Amended Complaint must be dismissed, and costs and attorneys fees awarded to Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 8.

DATED this 17th day of September, 2013.

NAYLOR & HALES, P.C.

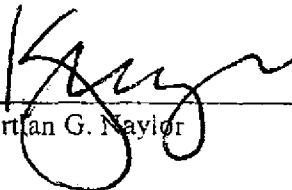
By 
Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 489-8988
☒ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com


Kirtlan G. Naylor

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 9.

FILED A.M. _____
P.M. 3:40
SEP 17 2013
MD
Johynn Drage, Clerk District
Court Blaine County, Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

Case No. CV-2012-479

**AFFIDAVIT OF KIRTLAN G.
NAYLOR IN SUPPORT OF MOTION
TO DISMISS**

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE.

Defendants.

[illegible]

I, **KIRTLAN NAYLOR**, having been duly sworn do hereby depose and say as follows:

1. I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF KIRTLAN G. NAYLOR
IN SUPPORT OF MOTION TO DISMISS - 1.**

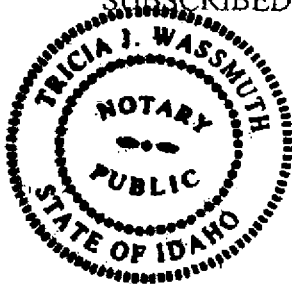
2. I am counsel of record for The City of Sun Valley, Nils Ribí, and Dewayne Briscoe, all named defendants in the current action.

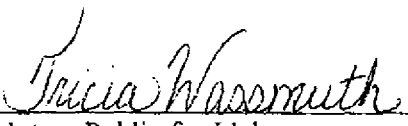
3. On July 29, 2013, I sent an email to Plaintiff's counsel, Eric Swartz, informing him that there was no basis for the individual liability of Mr. Ribí or Mr. Briscoe based on their one claim of retaliatory discharge pursuant to I.C. §§ 6-2101, *et. seq.*, and informing him of our intent to move for dismissal of these individuals. A true and accurate copy of this email with attachment is attached hereto as **Exhibit A**.

4. In that email of July 29, 2013, I attached a memo of legal analysis supporting our assertion that there is no individual liability for a retaliatory discharge claim under the Idaho Whistleblower Act, which legal analysis supports the currently pending motion to dismiss.


Kirtlan G. Naylor

SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013.




Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 8/4/17

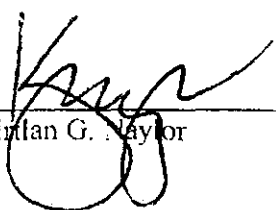
**AFFIDAVIT OF KIRTLAN G. NAYLOR
IN SUPPORT OF MOTION TO DISMISS - 2.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☐ Hand Delivered
☒ Fax Transmission: 489-8988
☒ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Kirtlan G. Naylor

Attachment: Exhibit A

M:\CRMP\Hammer v. Sun Valley\Pleadings & Cases\CV12-479 (Hammer WB 2012)\8406_18 MTD_Aff KGN.wpd

**AFFIDAVIT OF KIRTLAN G. NAYLOR
IN SUPPORT OF MOTION TO DISMISS - 3.**

Tricia Wassmuth

From: Kirtlan Naylor
Sent: Monday, July 29, 2013 7:03 PM
To: Eric Swartz
Cc: Joy Vega; Jake Naylor; Tricia Wassmuth
Subject: Hammer state law claim MTD
Attachments: Whistleblower Act no individual liability.pdf

Eric,

Unless we can come to agreement to consolidate the state case with the federal case shortly, we will be filing a Rule 3(b) motion to dismiss Nils and Mayor Briscoe from the state case as we did in Hulsey.

Given the fact that the state case is only a WBA, and the only action available is against the "employer" (City of Sun Valley), there can be no claim for individual liability. See the detailed brief we have researched attached hereto and the conclusion.

If the case is not consolidated, we will file this motion in state court and seek fees and costs for pursuing it.

Let us know.

Kirtlan G. Naylor

Direct 208 947-2070



NAYLOR & HALES, P.C.

950 WEST BARNICK ST., SUITE 600 BOISE, ID 83702

This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

The Whistleblower Act provides "a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation." I.C. § 6-2101. Section 6-2103(4)(a) of the Whistleblower Act states: "'Employer' means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system, chapter 13, title 59, Idaho Code." It also provides that the word "employer" includes "an agent of an employer." I.C. § 6-2103(4)(b).

Plaintiff cannot name Nils Ribí and Dewayne Briscoe in their individual capacities as an "employer" under Section 6-2103(4)(b), just because they are agents of the City. The Idaho Whistleblower Act does not create a cause of action against individuals.

There are two possible constructions of the "agent" language found in Section 6-2103(4)(b). Plaintiff apparently argues that the legislature intended to define every public sector supervisory employee in Idaho as an "employer," and hence place each at risk of personal liability whenever he or she makes a personnel decision that could later be considered in violation of the Whistleblower Act. The other construction is the one universally adopted by other courts around the country: the "agent" language is only intended to ensure that *employers* will be held liable if their supervisory employees violate the Whistleblower Act, and that *employers* cannot avoid liability by arguing that a supervisor failed to follow instructions or deviated from the employer's policy.

In other words, in interpreting similar definitions of "employer" and "agent" contained in parallel federal laws¹ and state whistleblower statutes, nearly all other jurisdictions hold that such

¹ Due to the nearly-identical elements of proof set forth in state whistleblowing statutes and federal cases involving retaliatory discharge claims arising under Title VII of the Civil Rights Act of 1964, 29 U.S.C. §§ 2000 *et seq.*, federal and state courts analyze the two claims in virtually the same manner. Compare *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054 (9th Cir. 2002) with *Van v. Portneuf Medical Center*, 147 Idaho 552 (2009). Moreover, the Idaho

laws do not create a cause of action against individuals. Rather, "the 'agent' language is used to incorporate the theory of *respondet superior*, rather than [to] expose either supervisors or co-workers to personal liability in employment discrimination cases." *Obst v. Microtron, Inc.*, 588 N.W.2d 550, 553, 554 (Minn. Ct. App. 1999) (internal quotation omitted); see *Wathen v. General Electric Co.*, 115 F.3d 400, 406 (6th Cir. 1997). The California Supreme Court observed that:

[S]ince 1993, eight federal circuits have either (1) held that the "agent" language does not create individual liability for discrimination, or (2) found that, although individuals can be sued in their official or representative capacity, they may not be sued in their individual capacity and have no personal liability, or (3) interpreted similar language in a state statute as not creating individual liability.

Reno v. Baird, P.2d 1333, 1337 (Cal. 1998). More specifically, the California Supreme Court indicated that the Courts of Appeal of the Second, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all explicitly held that the "agent" language found in federal employment discrimination laws do not impose personal liability upon supervisory employees. *Id.* at 1337-40 (citing *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313-14 (2d. Cir. 1995); *Birkbeck v. Marvel Lighting Corp.*, 30 F.3d 507 (4th Cir. 1994); *Grant v. Lone Star Co.*, 21 F.3d 649, 651-53 (5th Cir. 1994); *United States Equal Employment Opportunity Commission v. AIC Security Investigations, Ltd.*, 55 F.3d 1276 (7th Cir. 1995); *Lenhardt v. Basic Institute of Technology, Inc.*, 55 F.3d 377 (8th Cir. 1995); *Miller v. Maxwell's Intern, Inc.*, 991 F.2d 583 (9th Cir. 1993); *Saucers v. Salt Lake County*,

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1 F.3d 1122 (10th Cir. 1993); *Cross v. State of Alabama*, 49 F.3d 1490, 1504 (11th Cir. 1995)).

Virtually all federal and state courts that have reviewed this issue have agreed with the California Supreme Court's assessment and determined that their respective whistleblower and employment discrimination schemes did not create individual liability for supervisors. *United States ex rel. Lamar v. Burke*, 894 F.Supp. 1345 (E.D.Mo.1995) (holding that since Title VII's definition was broader and yet did not impose individual liability on supervisors, the narrower, ordinary and natural meaning of employer for purposes of the False Claims Act did not impose individual liability on employee/supervisors); *Palladino v. VNA of Southern New Jersey, Inc.*, 68 F.Supp.2d 455 (D.N.J.1999) (holding that corporate officers and supervisors were not subject to individual liability under the federal False Claims Act because the Act prohibited discrimination with respect to employment conditions and only an employer could logically grant the relief made available); *Janken v. GM Hughes Electronics*, 53 Cal.Rptr.2d 741, 747 (Cal. 1996) (rejecting individual liability and stating the agent language was intended to "ensure that employers will be held liable if their supervisory employees take actions later to be found discriminatory, and that employers cannot avoid liability by arguing that a supervisor failed to follow instructions or deviated from the employer's policy"); *Obst v. Microton, Inc.*, 588 N.W.2d 550 (Minn. Ct. App. 1999) (declining to hold individuals liable under Minnesota's whistleblower statute); *Alejandro v. Robstown Independent School District*, 131 S.W.3d 663, 668 (Tex. Ct. App. 2004) (holding that there is no private right of action against the superintendent or members of the board of trustees in their individual capacities because the "Act creates a private cause of action against the employing 'state or local governmental entity'").

For example, in *Abbamont v. Piscataway Township Board of Education*, 138 650 A.2d 958 (N.J. 1994) the New Jersey Supreme Court rejected individual liability under its whistleblower

provisions, which contained a definition of employer similar to the definition in Idaho's Act. *See id.* at 963 (stating that under New Jersey's Whistleblower Act, "an employer can be any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent"). The Court noted that the employer was the "party with the power and responsibility . . . to take . . . remedial action" under the statute and "that to fulfill the remedial purposes of . . . [the act], employers should be strictly liable for equitable relief in the nature of reinstatement, restoration of back pay and the like." *Id.* at 964 (citation omitted).

Furthermore, Idaho's Whistleblower Act provides for several forms of relief for employees who win favorable judgments against their respective employers. I.C. § 6-2106. For example, Section 6-2106 provides that employees may be entitled to "any or all" of the following forms of relief: "an injunction to restrain continued violation of [the Whistleblower Act]," "reinstatement of the employee to the same position held before the adverse action," and "reinstatement of full fringe benefits and seniority rights." I.C. § 6-2106. By providing that an aggrieved employee may be awarded "any and all" of the relief allowed under the Idaho Whistleblower Act, the legislature clearly intended to afford an aggrieved party all the relief allowed under the act. The fact that only the state of Idaho or other governmental entities could conceivably grant much of the relief afforded by the Idaho Whistleblower Act further supports the idea that the legislature did not intend for supervisory employees or managers to be individually liable under the act. *See Abbamont*, 138 650 A.2d at 964; *Alejandro*, 131 S.W.3d at 668-69.

CONCLUSION

The Idaho Whistleblower Act, as a whole, is inconsistent with individual liability. The purpose of the "agent" language set forth in I.C. § 6-2103(4)(b) serves as a mechanism by which *respondeat superior* liability attaches to the state of Idaho and other governmental employers.

Further, even alleged acts by "agents" acting outside the course and scope of their employment cannot overcome the clear statutory intent in a WBA "Retaliatory Discharge" claim (as Plaintiff have titled the only Count in the state court complaint). The retaliation claimed was Hammer's discharge, and the City of Sun Valley was the only "employer" for purposes of discharge.

Even so, just asserting "some or all" of the acts in the complaint were done by Ribí and Briscoe outside the course and scope of their employment is not enough to rebut the statutory presumption found in 6-903(5). Unless Plaintiff can articulate what act alleged in the complaint was done by those Defendants outside their course and scope, the presumption stands.

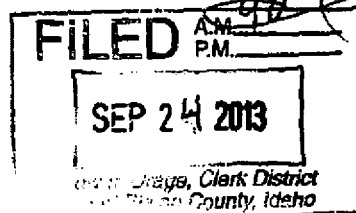
TABLE OF CONTENTS

Errata to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	9/24/2013	230
Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	9/24/2013	234
Reply Memorandum in Support of Defendants' Motion to Dismiss	9/27/2013	248
Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	258
Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	261
Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Compel	11/04/2013	293
Affidavit of Attorney James R. Donoval Related to Motion to Compel	11/04/2013	369

INDEX

Affidavit of Attorney James R. Donoval Related to Motion to Compel	11/04/2013	369
Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Compel	11/04/2013	293
Errata to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	9/24/2013	230
Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	261
Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	258
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Reply Memorandum in Support of Defendants' Motion to Dismiss	9/27/2013	248

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Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**ERRATA TO PLAINTIFF'S
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on September 23, 2013, Plaintiff sent to the court for filing PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS. The Appendix referenced in the RESPONSE was inadvertently omitted from the document. Attached hereto is the Appendix.

Plaintiff and Plaintiff's counsel apologize to the Court and to Defendants for any delay or inconvenience caused by this mistake.

ERRATA TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS - I

DATED this 23rd day of September, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

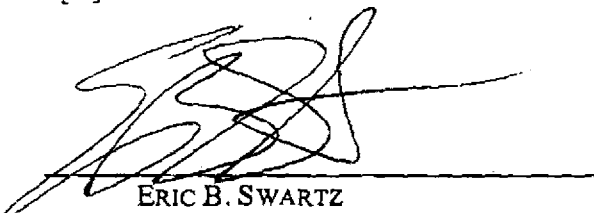
I HEREBY CERTIFY that on this 23rd day of September, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
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The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
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P.O. Box 368
Rupert, ID 83350

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ERIC B. SWARTZ
JOY M. VEGA

HUMAN RESOURCES COMMITTEE

DATE: FRIDAY, March 5, 1993
 TIME: Upon Adjournment
 PLACE: Room 416
 PRESENT: Chairman Tippetts, Rep. Wilde, Rep. Gurnsey, Rep. Schaefer, Rep. Ball, Rep. Kempton, Rep. Mortensen, Rep. Larsen, Rep. Barain, Rep. Horvath, Rep. Alexander, Rep. Vandenberg, and Rep. Wright.

ABSENT/
 EXCUSED: None.

Vice Chairman Wilde called the meeting to order at 12:15 p.m.

HCR 21 STATING LEGISLATIVE INTENT ON PAY POLICIES FOR STATE EMPLOYEES

Rep. Alexander stated that with the current pay plan for state employees, some employees may experience a decrease in take-home pay. This resolution requires the agencies seek out money within their departments to give their employees a \$30 increase. If they don't, JPAC will review each department and determine whether they need assistance.

NOTION: Rep. Horvath made a motion to send HCR 21 to the floor with a "do pass" recommendation.

Rep. Gurnsey stated that she felt there is a problem with the language in this resolution. She stated that it would be better if it said the agencies need to use any unencumbered funds left in their budget for this \$30 bonus.

Rep. Alexander stated that he is concerned with the time limit and that it is so late in the year and that if this legislation is not acted on now, there may not be a chance for it to get through this year. He stated that it was fine to send this resolution to General Orders.

SUBSTITUTE MOTION: Rep. Gurnsey made a motion to send HCR 21 to General Orders with amendments attached.

Rep. Gurnsey stated the suggested amendments: any unencumbered funds that are available in any agency will be first used to pay these employees prior to the time any bonuses or one-time capital outlay expenditures are made by the agencies in a one-time manner. Rep. Gurnsey also stated that this would be only a one-time bonus.

Rep. Alexander stated that he hoped that since this is already in the personnel base that this would be on-going.

Rep. Gurnsey stated that this would take an appropriation for on-going money and cannot be done with one-time money.

Discussion about the time constraints and the responsibility of the committee to get this legislation correct, followed. Rep. Gurnsey left the meeting to have an analyst prepare an amendment.

UNANIMOUS CONSENT was asked to leave any action on the motion to send HCR 21 to general orders, pending Rep. Gurnsey's return with amendments, and that H 242 be considered in her absence. (see pg. 3)



H 242 TO PROVIDE FOR THE PROTECTION OF AN EMPLOYEE WHO CAME FORTH IN GOOD FAITH TO EXPOSE THE EXISTENCE OF ANY WASTE OF PUBLIC FUNDS, PROPERTY OR MANPOWER

Rep. Berrain addressed the Committee and stated that this bill provides for protection of employees to expose any waste in public funds, property or man power. He also stated that he has had a lot of phone calls and contact from the Senate concerning this legislation. He stated that he felt this was a very good bill.

MOTION: Rep. Berrain moved that H 242 be sent to the floor with a "do pass" recommendation.

Chairman Tippetts asked if the definition of "public body" was intended to mean all the groups that are listed in the legislation be considered the "public body". Rep. Berrain stated that the "public body" is to mean all state agencies and the heads of those agencies. Chairman Tippetts wondered if further clarification of the definition of these state agencies should be in the legislation. Rep. Berrain pointed out that this legislation is modeled after Minnesota law.

Chairman Tippetts asked if the definition of employer, meaning "the employing state agency or political sub-division of the state", is clear enough and if the Committee knows what groups this is talking about because this legislation applies to those groups. Rep. Berrain stated that this means only those political sub-divisions that are responsible directly to the state.

Chairman Tippetts stated that maybe there are some unanswered questions and several assumptions that may or may not be correct and that an option of the Committee would be to hold this until next week and that there could be some consultation with the Attorney General's office and some of the questions could be answered.

SUBSTITUTE MOTION: Rep. Vandenberg made a motion to hold H 242 for time certain until Tuesday, March 9, 1993.

Rep. Berrain voiced strong concerns that this legislation is being delayed again, after having brought it before the Committee several times.

Rep. Sali stated that broad definitions are needed in this legislation.

Chairman Tippetts stated that there is no intention to delay the legislation deliberately, only that there doesn't seem to be the legal expertise represented that is needed.

Rep. Schaefer stated that he felt that the language is structured in a complex way but that the situation the bill is trying to solve is also complex and that it's the only way that the focus can be made to achieve the purpose of the bill.

The motion carried and H 242 will be held until Tuesday, March 9, 1993, with Rep. Berrain contacting the Attorney General's office for someone to attend the meeting to answer questions and concerns of the Committee.


MOTION PENDING ON HCR 21. Rep. Gurnsey addressed the amendments she had drawn and other options were discussed.

Rep. Alexander stated that if this legislation is to do what it is intended, which is to see that state employees do not go home with less money, if this motion will solve that then he will not stand in the way.

ALTERNATE SUBSTITUTE MOTION: Rep. Sali made a motion to send HCR 21 to General Orders. The motion carried.

The meeting adjourned at 1:03 p.m.

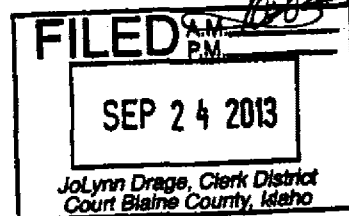

John H. Tippetts, Chairman


Susan Werlinger, Secretary

ORIGINAL

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

I.

INTRODUCTION

In this case, Plaintiff Sharon R. Hammer asserts a single cause of action pursuant to the Idaho Protection of Public Employees Act, Idaho -Code §§ 6-2101, *et seq.* ("IPPEA"). Ms. Hammer claims that adverse actions were taken against her by Defendant City of Sun Valley ("City"), as her employer; by Defendant Nils Ribi, both within and outside the scope of his role as a City Councilman; and by Defendant DeWayne Briscoe, both within and outside the scope of his role as City Mayor. Defendants Ribi and Briscoe have been named in their individual

capacities because they both acted intentionally, maliciously, and beyond the scope of their employment with the City for the purpose of effectuating adverse actions by the City against Ms. Hammer.

Defendants' Motion to Dismiss should be denied in its entirety. By their Motion, the Defendants ask the Court to dismiss Defendants Ribí and Briscoe, individually, from this case by claiming that the IPPEA does not provide a private right of action against any liable bad actor other than a plaintiff's employer. However, the IPPEA does not prohibit the naming of individuals in an action arising under it. Rather, it expressly anticipates the inclusion of individual defendants (*e.g.*, enumerated proof requirements include placing venue within the "county where the person against whom the civil complaint is filed resides." I.C. § 6-2105(3); emphasis added).

The Court should reject the Defendants' position that only an employer can be held liable for injurious and illegal actions pursuant to the IPPEA. Limiting an injured plaintiff's recourse to a governmental entity employer does not comport with the intent of the IPPEA or its plain language. Neither does relieving prospective individual defendants of liability when they acted with intent, malice, and beyond the scope of their employment in such a way that resulted in the employer engaging in unlawful conduct.

II.

UNDISPUTED FACTUAL BACKGROUND FOR PURPOSES OF A MOTION TO DISMISS

Defendants have moved to dismiss the Amended Complaint pursuant to Idaho Rule of Civil Procedure 12(b)(6), thereby requiring the Court to accept as true all material allegations of the Amended Complaint and draw all reasonable inferences in a light most favorable to the Plaintiff. *Glengary-Gamlin Protective Ass'n, Inc. v. Bird*, 106 Idaho 84, 88, 675 P.2d 344, 348

(Ct. App. 1983) (citing *Warth v. Seldin*, 422 U.S. 490, 501-02 (1975)). As such, the Court must accept as true the following facts:

- Ms. Hammer had a valid and enforceable contract of employment as the City Administrator for the City of Sun Valley from June 1, 2008 until January 19, 2012. Ms. Hammer also worked as a paid-on-call firefighter and EMT for the City of Sun Valley during this time. (Am. Compl. ¶¶ 1, 155.)

- Defendant Briscoe is the current elected Mayor of the City, having been sworn into office on January 3, 2012. Prior to becoming Mayor, Defendant Briscoe was elected Council President for the Sun Valley City Council in or about January 2010, and acted in that position until January 3, 2012. Some or all of the alleged acts and/or omissions engaged in by Defendant Briscoe were done outside of the course and scope of his employment with the City and with malice or with reckless disregard for Ms. Hammer's protected rights. (Am. Compl. ¶ 3.)

- Defendant Ribi acted as an elected Council Member for the Sun Valley City Council. Defendant Ribi's first term began in or about January 2006 through January 2010. Defendant Ribi's current term began on or about January 5, 2010, and will end in January 2014. Some or all of the alleged acts and/or omissions engaged in by Defendant Ribi were done outside of the course and scope of his employment with the City and with malice or with reckless disregard for Ms. Hammer's protected rights. (Am. Compl. ¶ 4.)

- On or about January 16, 1997, the City adopted its Personnel Policies & Procedures Manual ("Manual"), which has been amended from time to time. (Am. Compl. ¶ 18.)

- Within the Manual, the City expressly adopted a harassment policy that prohibited "harassment in any form, including verbal, physical and visual harassment" either "by or against any of its Employees." (Am. Compl. ¶ 29.)

- When an employee believes that he or she has been harassed “by a co-worker, Supervisor, any City official, or individual outside of the City organization,” the anti-harassment guidelines of the Manual instruct the employee to “immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.” Further, if the complaint is against “a member of the City Council, the Employee should report the complaint to the Mayor.” (Am. Compl. ¶ 30.)

- The Manual further prohibits retaliation against a person “for filing a harassment charge or making a harassment complaint.” (Am. Compl. ¶ 31.)

- City Council Members have no authority to direct another City employee in the administration of that employee’s duties. No City employee is directly supervised by any City Council Member. No City employee’s job performance is evaluated by any City Council Member. No City employee is allowed to provide confidential records to any City Council Member without approval from either the Mayor or the City Administrator. City Council Members have no authority to seek or take disciplinary action against any City employee. (Am. Compl. ¶ 28.)

- During Ms. Hammer’s employment as City Administrator, Defendant Ribí intentionally instructed her and attempted to direct her work as City Administrator. Defendant Ribí also intentionally harassed her, and then sought Ms. Hammer’s termination after she repeatedly refused to fulfill his demands. (Am. Compl. ¶¶ 45-153, 156.)

- As a result of Ms. Hammer’s refusals to fulfill Defendant Ribí’s unauthorized demands for information, he verbally, physically, and visually harassed her. (Am. Compl. ¶¶ 45-153, 159.)

- Throughout her employment, Ms. Hammer was repeatedly and continuously harassed,

physically and emotionally intimidated, and verbally abused by the conduct of Defendant Ribí. (Am. Compl. ¶¶ 33, 45-153, 156.)

- Ms. Hammer repeatedly reported the incidents of harassment, intimidation and abuse to Mayor Wayne Willich, Adam King, or City Police Chief Cam Daggett. (Am. Compl. ¶¶ 34, 48-127, 157.)

- In retaliation for Ms. Hammer's complaints against him, Defendant Ribí sought confidential documents from other City employees, including at least Kelly Ek and Michelle Frostenson, in order to create the appearance of misconduct by Ms. Hammer. (Am. Compl. ¶¶ 35, 129-133.)

- At Defendant Ribí's instruction, Ms. Ek and Ms. Frostenson distributed confidential personnel documents regarding or relating to Ms. Hammer to, at least, Defendant Ribí and Mr. King. (Am. Compl. ¶¶ 36, 129-133.)

- In response to pressures from and allegations of misconduct alleged by Defendants Ribí and Briscoe, which were allegedly supported by confidential employment documents supplied by Ms. Ek and Ms. Frostenson, Mayor Willich, along with Council Members Ribí, Youngman, Briscoe, and Lamb, placed Ms. Hammer on administrative leave pending an independent special investigation. (Am. Compl. ¶¶ 37, 140.)

- Following the conclusion of the City's special investigation in late December 2011, Mayor Willich found Ms. Hammer to have done no wrong, and requested that she return to work immediately. Pursuant to the Manual, Mayor Willich's decision was final and binding. (Am. Compl. ¶¶ 38, 143.)

- Following the swearing-in of Defendant Briscoe as City Mayor in January 2012, Defendant Briscoe re-placed Ms. Hammer on administrative leave. A few weeks later,

Defendant Briscoe, along with Council Members Ribí, Youngman, Suhadolnik, and Griffith, terminated Ms. Hammer from her position as City Administrator. (Am. Compl. ¶¶ 39, 145-148.)

- Ms. Hammer was twice put on administrative leave and then fired in response to ongoing retaliation and pressures from Defendants Ribí and Briscoe. (Am. Compl. ¶¶ 40, 45-153.)

- Ms. Hammer was terminated from her positions as City Administrator, firefighter and EMT as a result of her persistence in reporting violations and suspected violations of the Manual by Defendant Ribí to Mayor Willich and Mr. King. (Am. Compl. ¶ 169.)

- Ms. Hammer was also terminated from her positions as a result of filing Complaints with the Blaine County District Court and the Idaho Human Rights Commission. (Am. Compl. ¶¶ 141-142, 170.)

- Ms. Hammer suffered adverse actions when she was placed on administrative leave and then fired. (Am. Compl. ¶ 41.)

- Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of a written announcement regarding Ms. Hammer's termination. Defendant Briscoe instructed and/or authorized the City to purchase newspaper advertisement space in the *Idaho Mountain Express*, where the full-page press release was published, in the color red, within a day or two of her termination. The press release implied that Ms. Hammer was guilty of the alleged misconduct. (Am. Compl. ¶ 149.)

- Following Ms. Hammer's termination, Defendant Briscoe prepared and/or authorized the publication of at least two additional press releases by the City regarding or relating to allegations of misconduct and/or harassment of other City employees by Ms. Hammer. The press releases implied that Ms. Hammer was guilty of the alleged misconduct. (Am. Compl.

¶ 150.)

- Before and after Ms. Hammer's termination, Defendant Ribi did, and continues to, maintain a personal website and a blog, both of which recount and discuss allegations of misconduct and/or harassment of other City employees by Ms. Hammer. Content within Defendant Ribi's website and blog imply that Ms. Hammer was guilty of the alleged misconduct. (Am. Compl. ¶ 152.)

- Defendant Briscoe's and Defendant Ribi's public statements have had a deleterious and harmful effect on Ms. Hammer's personal and professional reputation and her ability to obtain new public-sector employment. (Am. Compl. ¶¶ 151, 153.)

III.

STANDARD OF REVIEW

Grounds for dismissal under Idaho Rule of Civil Procedure 12(b)(6) may be comprised only of the pleadings, to determine whether a claim for relief has been stated, and nothing more. I.R.C.P. 12(b)(6). "The only facts which a court may properly consider on a motion to dismiss for failure to state a claim are those appearing in the complaint" *Taylor v. McNichols*, 243 P.3d 642, 2010 WL 3448851 (Idaho 2010) (quoting *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990)). And the Court must construe all such facts as being true. *Walenta v. Mark Means Co.*, 87 Idaho 543, 547, 394 P.2d 329, 331 (1964) (citing *Williams v. Williams*, 82 Idaho 451, 354 P.2d 747 (1960); and *Wackerli v. Martindale*, 82 Idaho 400, 353 P.2d 782 (1960)). "After drawing all inferences in favor of the non-moving party, the Court then examines whether a claim for relief has been stated." *Id.* "The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *Brookshy v. Geico Gen. Ins. Co.*, 153 Idaho 546, 548, 286 P.3d 182, 184 (2012).

IV.

ARGUMENT

A. **The IPPEA Allows for Suits Against Individual Persons; It is Not Limited to Government Entity Employers**

Defendants' Motion to Dismiss ignores the applicable and plain language of the IPPEA. Instead, their motion focuses on cases interpreting Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000, *et seq.*) and other states' statutes and cases interpreting the same. The only thing that needs to be reviewed to answer the question posed by Defendant's motion is the IPPEA.

When determining the provisions and intent of a statute, the Court is obligated to first look solely at the language of the statute itself, before looking at outside sources or case law to make determinations related to the statute. Where the language of a statute is plain and unambiguous, a Court must give effect to the statute as written. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685 688 (1999); citation omitted. "Unless the result is palpably absurd, this Court assumes that the legislature meant what is clearly stated in the statute." *Id.*

The Idaho legislature drafted the IPPEA to expressly include the right to sue a person under the IPPEA:

6-2105. Remedies for employee bringing action -- Proof required.

(2) **An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days after the occurrence of the alleged violation of this chapter.**

(3) **An action begun under this section may be brought in the district court for ... the county where the person against whom the civil complaint is filed resides or has his principal place of business.**

(I.C. § 6-2105(2) and (3); emphasis added.) "Person" cannot mean a governmental entity

employer. It can only mean individual persons who are the "agent" of the governmental entity employer:

(4)(a) "Employer" means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system, chapter 13, title 59, Idaho Code;

(b) "Employer" includes an agent of an employer.

(I.C. § 6-2103 (4)(a) and (b); emphasis added.) The only other "persons" who are referenced in the IPPEA are governmental entity employer officers and employees:

(5) "Public body" means any of the following:

(a) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution or any other body in the executive branch of state government;

(b) An agency, board, commission, council, institution member or employee of the legislative branch of state government;

(c) A county, city, town, regional governing body, council, school district, special district, municipal corporation, other political subdivision, board, department, commission, council, agency or any member or employee of them;

(d) Any other body that is created by state or local authority, or any member or employee of that body;

(e) A law enforcement agency or any member or employee of a law enforcement agency; and

(f) The judiciary and any member or employee of the judiciary.

(I.C. § 6-2103(5).) The legislative history on the IPPEA also confirms that Idaho's lawmakers intended the IPPEA to apply to governmental entity employers and heads of those agencies:

Chairman Tippete asked if the definition of "public body" was intended to mean all the groups that are listed in the legislation be considered the "public body". Rep. Bertain stated that the "public body" is to mean all state agencies and the heads of those agencies.

(Appendix A hereto, Mar. 5, 1993 Human Resources Committee notes; H242.)¹

Defendants admit that Defendants Ribí and Briscoe are agents of the City of Sun Valley, but deny that they are within the definition of employer as defined by I.C. § 6-2103(4)(b). Defendants argue that the term “agent” is intended to incorporate *respondeat superior* liability to ensure that governmental entity employers are held liable for acts of its agents:

As Defendants Ribí and Briscoe are agents of the City of Sun Valley, and are not an employer as defined by I.C. § 6-2103(4)(b), Plaintiff cannot name these defendants in their individual capacities because the Idaho Whistleblower Act does not create a cause of action against individuals but only governmental entities. The Idaho Whistleblower Act, as a whole, is inconsistent with individual liability. The purpose of the “agent” language set forth in I.C. § 6-2103(4)(b) serves as a mechanism by which *respondeat superior* liability attaches to the state of Idaho and other governmental employers. The

(Mem. in Support of Defendants’ Motion to Dismiss, p. 3.)

“Under the doctrine of *respondeat superior*, ‘an employer is liable in tort for the tortious conduct of an employee committed within the scope of employment.’” *Nava v. Rivas-Del Toro*, 151 Idaho 853, 857, 264 P.3d 960, 964 (2011). The doctrine of *respondeat superior* is not synonymous with the plain meaning of the term “agent” as used in the IPPEA. Also, there is no indication that the enactment of the IPPEA re-wrote the doctrine of *respondeat superior* to make a governmental entity employer liable for all acts of its agents regardless of whether the acts were authorized.

¹ The IPPEA was originally drafted and debated by the Idaho House of Representatives, and in particular the Human Resources Committee, during the 1993 Idaho General Assembly legislative session, as House Bill 242. The IPPEA was re-presented in the same form it had been presented to the Idaho House of Representatives in 1993 during the 1994 legislative session as House Bill 616, and eventually was passed by both the Idaho House of Representatives and the Idaho Senate, and signed by the Governor on March 15, 1994.

An “agent” is either authorized or not authorized. An agent who acts outside of the scope of his authority is still called an “agent.” “The actions of an agent are the actions of the corporation. **An agent is only liable for actions which are outside its scope of duty to the corporation.**” *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008) (emphasis added) (citing *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho*, 123 Idaho 650, 654, 851 P.2d 946, 948 (1993)). See also *T. W. & L. O. Naylor Co. v. Bowman*, 39 Idaho 764, 230 P. 347 (1924) (“A principal cannot be bound by the acts of an agent done outside of the actual or apparent scope of his authority, unless such acts have been ratified and adopted by the principal.”)

Defendants’ argument that there is no personal liability under the IPPEA because of *respondeat superior* assumes, incorrectly, that the only adverse employment action for which relief can be granted under the IPPEA is adverse employment action that is carried out by an agent acting within the scope of his employment. The IPPEA does not differentiate between liability for adverse employment action undertaken by an authorized or unauthorized agent. The IPPEA provides for a cause of action for all adverse employment action undertaken by an “employer” and its “agent” – whether the “agent” is authorized, or not.

B. Title VII and Other States’ Whistleblower Statutes and Cases Interpreting the Same Relied Upon by the Defendants Have No Application In Analyzing Whether Individuals Are Subject to Personal Liability Under the IPPEA

The other states’ statutes and cases interpreting the same cited by the Defendants are not the same as the IPPEA. The language of the statutes is different; the purpose behind the same is different; the scope of the statutes are different.

The *Obst v. Microton*, 588 N.W.2d 550 (Minn. App. Ct. 1999) case cited in Defendants’ Memorandum relates to a Minnesota “whistleblower” statute (Minn. Code Section 181.931) (the

“Minnesota Whistleblower Statute”) that covers all private and corporate employers (including individuals (*i.e.*, sole proprietor), as well as government entities. Unlike the IPPEA, which expands the definition section beyond “employer” to include an “agent” of the employer, the Minnesota Whistleblower Statute is expressly limited to people who employ employees: “Employer means any person having one or more employees in Minnesota and includes the state and political subdivision of the state.” MINN. STAT. §181.931, Subd. 3. Unlike Idaho’s legislators, Minnesota’s legislators did not expand employer to include employees, agents, or officers of the employer. They also did not expressly provide for remedies and a venue for suing individual persons.

The *Reno v. Baird*, 18 Cal. 4th 640, 957 P.2d 1333 (Cal. Sup. Ct. 1998) case cited by the Defendants also concerns a statute that does not include an express invitation to bring an action against an individual (unless the individual is an employer). Defendants’ citation to *Abbamont v. Piscatway Township*, 138 N.J. 405, 650 A.2d 958 (N.J. Sup. Ct. 1994) is also unsupportive. Not only does the statute at issue in *Abbamont* not include IPPEA’s express invitation to sue a person, nowhere in the *Abbamont* holding does the New Jersey Supreme Court make a finding that government officials are not personally liable under New Jersey’s “conscientious employee” statute. The *Abbamont* holding is limited to: (1) the employer is responsible for the employee’s actions under the doctrine of *respondeat superior* under the New Jersey Whistleblower Statute; and (2) an aggrieved employee is entitled to seek punitive damages under the New Jersey Whistleblower Statute. The *Abbamont* finding regarding *respondeat superior* tracks the definition of employer under the conscientious employee act. Under CEPA, “employer” is defined as:

any individual, partnership, association, corporation or any person
or group of **persons acting directly or indirectly on behalf of or**

in the interest of an employer with the employer's consent and shall include all branches of State Government, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 415, 650 A.2d 958, 962 (N.J. 1994) quoting N.J.S.A. 34:19-2a (emphasis added). The New Jersey statute, by definition, imposes liability on an employer for acts of the employer's agent that were within the scope of their employment, or where acts outside the scope of employment are later ratified by the employer. The IPPEA does not make a distinction between agents' authorized or unauthorized acts – whether ratified or not.

Defendants' contention that the Idaho Supreme Court case of *Van v. Portneuf Medical Center*, 147 Idaho 552, 212 P.3d 982 (2009) found that there is no personal liability for government officials or employees under the IPPEA, is not accurate. The *Van* Court did not address whether there was individual liability under the IPPEA. With regard to the IPPEA, it found, only, that the IPPEA was not subject to Idaho Tort Claim Act notice requirements.

V.

CONCLUSION

For the foregoing reasons, Plaintiff Sharon Hammer respectfully requests that the Court deny the Defendants' Motion to Dismiss, and that Defendant Briscoe and Defendant Ribi be maintained as parties in their individual capacities. Plaintiff further requests that the Defendants' request for attorney fees and costs be denied. And, if the Court considers the Affidavit of Kirtlan G. Naylor in ruling upon any aspect of the Defendants' Motion to Dismiss, that the Motion be converted to a motion for summary judgment and the Plaintiff provided ample additional time to respond to such evidence.

DATED this 23rd day of September, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
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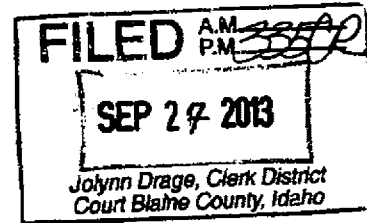
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**REPLY MEMORANDUM IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

Defendants, by and through their counsel, Naylor & Hales, P.C., hereby submit their Reply Memorandum in Support of their Motion to Dismiss the Plaintiff's Complaint.

ARGUMENT

A. A Claim of Retaliatory Discharge Cannot Support Individual Liability.

Plaintiff's only stated cause of action is that of retaliatory discharge under the Idaho Protection of Public Employees Act §§ 6-2101, *et seq.* Defendants have argued that such a claim is impossible to reconcile with allegations of individual liability. Even in the introduction of

Plaintiff's opposition memorandum, she clearly concedes that Defendants Ribi and Briscoe

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 1.

themselves did not take the adverse employment action against Plaintiff themselves, but rather that they acted "in such a way that resulted in the employer engaging in unlawful conduct." (Plaintiff's Response in Opposition to Defendants' Motion to Dismiss, p. 2, hereinafter "Plaintiff's Opposition Memo") (emphasis added) Plaintiff makes multiple factual allegations of conduct against Defendants Ribí and Briscoe, but those allegations serve only to support the retaliatory nature of her claim.

Plaintiff never refutes Defendants' argument that it would be absurd to try and claim that her termination, which is the basis for her entire claim, was somehow effectuated "outside the course and scope" of the duties of Defendants Ribí and Briscoe. Her own arguments concede that individual liability does not exist in this case due to the fact that all adverse actions applicable to the IPPEA are directly attributable to the City, and not to Defendants Ribí and Briscoe as individuals:

Defendants Ribí and Briscoe have been named in their individual capacities because they both acted intentionally, maliciously, and beyond the scope of their employment with the city for the purpose of effectuating adverse actions by the City against Ms. Hammer.

Plaintiff thus recognizes that Defendants Ribí and Briscoe acted separate and apart from the "adverse actions by the City." However, the only cause of action she alleges here is the retaliatory termination taken by the City, and which cannot be imputed to an individual defendant outside the course and scope of their employment. The only way that the City can take any action at all is through its agents and, as previously argued, the doctrine of *respondeat superior* affords plaintiffs sufficient grounds to gain the remedies provided by the IPPEA. As there cannot be individual liability for a retaliatory discharge, Defendants Ribí and Briscoe should be dismissed.

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 2.

B. Defendants Ribí and Briscoe Are Agents of the City of Sun Valley and Therefore Are Not Individually Liable Under the IPPEA.

As Defendants Ribí and Briscoe are agents of the City of Sun Valley, they are included under the definition of "employer" as stated in I.C. § 6-2103(4)(b), and are therefore not individually liable. Plaintiff cannot name these defendants in their individual capacities because the IPPEA does not create a cause of action against individuals but only governmental entities. The IPPEA, as a whole, is inconsistent with individual liability. The purpose of the "agent" language set forth in I.C. § 6-2103(4)(b) serves as a mechanism by which *respondeat superior* liability attaches to the state of Idaho and other governmental employers.

The Idaho Supreme Court has recently affirmed in a parallel statutory construction case that the inclusive use of "agent" in the definition of "employer" serves to invoke *respondeat superior* and does not create any individual liability. *Johnson v. North Idaho College*, 153 Idaho 58, 63 (2012). In that case, the analysis was with respect to the Idaho Human Rights Act, but the pertinent part of the Court's reasoning was the reaffirmation of the precedent that it is appropriate to apply Title VII analysis to parallel state statutes. *Id.*, (citing *Bowles v. Keating*, 100 Idaho 808, 811 (1979)).

While the IPPEA expressly includes the agent of the employer in the definition of "employer," there is no provision for an agent of the employer to have any sort of individual liability apart from that liability already imputed to the employer. I.C. § 6-2103(4)(b). This is logical, because a governmental entity cannot act for itself, and therefore cannot create liability for itself, but can only act through agents, and those individual agents acting on behalf of the governmental entity should not be held liable when acting on behalf of the governmental entity. However, Plaintiff argues that Defendants Ribí and Briscoe, as agents of the City, are liable under the IPPEA but that

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 3.

their alleged actions outside the course and scope of their employment was "unauthorized," and that the IPPEA authorizes individual liability for any damages stemming from this conduct. (Plaintiff's Opposition Memo, p. 10-11) In other words, the Plaintiff's position is that Defendants Ribí and Briscoe should be considered an "employer" by virtue of their agency in order to bring a cause of action under the IPPEA, but then should face individual liability for allegedly acting outside the course and scope of that agency. This is a circular argument and contrary to the plain language and purpose of the statute.

If Defendants Ribí and Briscoe acted outside the course and scope of their employment and somehow caused damage to Plaintiff, there may be other legal causes of action that are available for Plaintiff to seek appropriate relief, but Plaintiff has only alleged a violation of the IPPEA. For purposes of governmental liability, the IPPEA includes actions by agents instead of excluding those actions to force agents to face individual liability. Again, it is impossible for Defendants Ribí and Briscoe to be held individually liable for a retaliatory termination, as a termination is a specific act of the employer, and Defendants Ribí and Briscoe could not have the authority to terminate Plaintiff outside the course and scope of their employment.

There is also no reasonable basis to believe that the exclusion of individual liability "does not comport with the intent of the IPPEA or its plain language." (Plaintiff's Opposition Memo, p. 2) The intent of the IPPEA is "to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation." I.C. § 6-2101 (emphasis added). The plain language references governmental entities and employers, but does not create any individual causes of action or state that the purpose of the IPPEA is to penalize individual employees outside

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 4.

of their agency or course and scope of their duties. There simply is no cause of action found within the statute that would support individual liability, and other than the mere mention of "persons" in the venue provision of the statute, Plaintiff has pointed to no provision or case law that would support otherwise. As Defendants Ribí and Briscoe are agents of the City, they cannot be held individually liable for violations of the IPPEA, and should be dismissed.

C. The Plain Language of the IPPEA Does Not Establish Individual Liability.

The IPPEA is clear, through a plain reading of the material sections of the statute, that it only prohibits conduct by employers and their agents. I.C. § 6-2104 specifically states the types of conduct prohibited by the IPPEA, and in so doing, it only references "employers." It specifically prohibits "employers" from taking adverse actions against employees, and never mentions individuals, persons, public bodies, or any other construction of plausible parties. Additionally, the ~~transfer of individual liability to employers~~ prohibition of individual conduct makes it clear the legislature did not intend to impose individual liability on employees.

This analysis is echoed in *Miller v. Maxwell's Intern. Inc.*, 991 F.2d 583, 587 (9th Cir. 1993), where the Ninth Circuit discussed the statutory limits of liability found in Title VII to employers with fifteen or more employees, and the ADEA, which limits liability to employers with twenty or more employees. The court there stated that the reasoning behind such limitation was, in part, to avoid burdening small entities with the costs associated with litigating these types of claims. *Id.* "If Congress decided to protect small entities with limited resources from liability, it is inconceivable that Congress intended to allow civil liability to run against individual employees." *Id.*

With the IPPEA, a similar conclusion can be clearly drawn, as the definition of “employer” includes only “the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system, chapter 13, title 59, Idaho code.” I.C. § 6-
participate in the public employees retirement system, it is likewise inconceivable that the Idaho legislature saw fit to impose individual liability for violations of the IPPEA as individuals cannot be eligible to participate in the employee retirement system.

Contrary to Plaintiff’s argument, the IPPEA does not “include an express invitation to bring an action against an individual.” (Plaintiff’s Opposition Memo, p. 12) In support of this assertion, Plaintiff cites to two provisions in the IPPEA, which, when read in the context of the entire statute, have little to no practical application to the IPPEA itself. Plaintiff bases the majority of her argument on I.C. § 6-2105(3), which is the venue statute for the IPPEA, and reads fully as follows:

An action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against

While this language does reference a “person against whom the civil complaint is filed,” this mere mention of an individual defendant in this isolated section of the statute is insufficient to fully extend the authority of the IPPEA to individual liability when the conduct prohibited is specifically limited to employers. Additionally, the “principal place of business” language is inconsistent within this section of the statute itself as it is inconceivable how an alleged individual defendant’s principal place of business would have any bearing upon an allegation of governmental retaliation, when that

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 6.

person must be an agent of the governmental entity and thus the principal place of business language is superfluous.

Plaintiff then relies on the definition of the term "public body," as found in I.C. § 6-2103(5), in order to apply individual liability to the IPPEA. This reliance is misplaced, however, as this term is never mentioned anywhere else in the statute. Plaintiff argues that the references to individual employees and members in this section are indicative of the legislature's intent to impose individual liability for violations of the IPPEA. (Plaintiff's Opposition Memo, p. 8-10) And although stating that Defendants' argument "ignores the applicable and plain language of the IPPEA," she only cites to 20 year-old legislative history to support her interpretation of the plain language of the IPPEA. (*Id.*) However, a plain reading of the full IPPEA indicates that the term "public body" never appears anywhere else in the statute, nor is it referenced in any material way. It is simply a defined term without material application. As already argued above, the conduct prohibited by the IPPEA applies strictly to "employers," and as that term is fully defined within the statute with no reference to the "public body" language, it needs no further explanation. As the plain language of the IPPEA does not authorize individual liability, dismissal of Defendants Ribí and Briscoe is proper.

D. Plaintiff Has Provided No Supporting Precedent to Refute the Application of the Lack of Individual Liability in Title VII to the IPPEA.

Plaintiff has failed to rebut Defendants' argument that there is no case law that supports a finding of individual liability for a retaliatory discharge in a whistleblower statute context. Plaintiff's few attempts to distinguish cases regarding the application of Title VII principles are also unpersuasive when viewed in the context of all the persuasive authority cited by Defendants (and otherwise un rebutted by Plaintiff). Out of the numerous cases cited by Defendants in support of

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 7.

applying Title VII's lack of individual liability and *respondeat superior* to similarly structured agency language in the IPPEA, which was not exhaustive by any means, Plaintiff has not provided one case to the contrary to support her position that the IPPEA or similarly structured statutes support individual liability. She has only attempted to distinguish three of the various cases cited by Defendants.

Even Plaintiff's attempts to distinguish cases cited by Defendants are unpersuasive. For example, Plaintiff attempts to distinguish *Obst v. Microtron, Inc.*, 588 N.W.2d 550, 554 (Minn. Ct. App. 1999) *aff'd*, 614 N.W.2d 196 (Minn. 2000), through differences in the language of the Minnesota whistleblower statute, which interestingly enough, was the model behind Idaho's own whistleblower statute. (See Errata to Plaintiff's Response, p. 2) While the language behind the two whistleblower statutes is facially different, this is an irrelevant distinction because the Minnesota court's analysis in this case was ultimately based on a Title VII analysis, not an isolated analysis of its own statute. In doing so, that court noted Title VII's definition of an employer including "any agent of such a person." *Obst*, 588 N.W.2d at 544. The court there specifically recognized the difference in the language in noting, "in Title VII cases, which use a broader definition of employer than appears in the Minnesota whistleblower statute, courts have declined to find individual liability." *Id.* (emphasis added).

Even after recognizing that Title VII employed a "broader definition," the *Obst* court then applied Title VII law to the more narrow Minnesota whistleblower statute. *Obst*, 588 N.W.2d at 544. In other words, even though Plaintiff points out that the Minnesota whistleblower statute is facially more restrictive than the Idaho IPPEA, this is an immaterial distinction in *Obst* due to the reliance

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 8.

of the Minnesota court on the "broader definition" of employer used by Title VII, which is practically parallel to the IPPEA definition.

Plaintiff's remaining attempts to distinguish Defendants' cited cases rely on her presumption that the venue provision of the IPPEA "expressly invites" a claim to be brought against an individual. However, as previously argued, this presumption is erroneous because it does not comport with the full context of definitions and actual prohibited conduct as found in the IPPEA. Otherwise, the statute in *Reno v. Baird*, 18 Cal. 4th 640, 957 P.2d 1333 (Cal. Sup. Ct. 1998), is directly on point and specifically includes language that is almost identical to the IPPEA with respect to the definition of an employer and includes agents in that definition. The California Supreme Court then continued, much like the Minnesota Appellate Court, to apply a Title VII analysis to this similar statutory construction, and held that individual liability did not apply. *Id.* at 647-656. As Plaintiff has failed to provide any legal basis for not applying the widely accepted interpretation of Title VII precedent to the IPPEA, Defendants' arguments that it is applicable are valid and Defendants Ribí and Briscoe should be dismissed.

ATTORNEYS FEES

Defendants wish to clarify at this point that the Affidavit of Kirtlan G. Naylor, filed contemporaneously with its motion to dismiss, is intended only for this Court's consideration for attorney fees pursuant to I.R.C.P. 11(a)(1). Defendants request that this Court exclude consideration of this affidavit in making a determination on Defendants' motion to dismiss, which is based on purely legal grounds, and thus does not convert this motion to dismiss into a motion for summary judgment as contemplated in I.R.C.P. 12(b).

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 9.

CONCLUSION

For the reasons set forth above, Defendants renew their request that individually named Defendants Ribí and Briscoe in Plaintiff's Amended Complaint be dismissed, and costs and attorneys fees awarded to Defendants.

DATED this 27th day of September, 2013.

NAYLOR & HALES, P.C.

By 

Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of September, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☐ Hand Delivered
☒ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com


Kirtlan G. Naylor

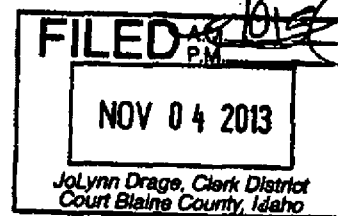
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REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS - 10.

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S MOTION TO
ENFORCE SUBPOENA AGAINST
NON-PARTY PATRICIA BALL AND
TO COMPEL THE PRODUCTION OF
DOCUMENTS WITHHELD FROM
PRODUCTION IN DISCOVERY AND
IN RESPONSE TO SUBPOENA**

COMES NOW the Plaintiff, Sharon R. Hammer ("Ms. Hammer"), by and through her counsel of record, Jones & Swartz PLLC, and pursuant to Rules 7(b)(1), 26, 33, 34, and 45 of the Idaho Rules of Civil Procedure hereby moves this Court to enforce the Subpoena against non-party Patricia Latham Ball and to compel the production of documents withheld from production in discovery and in response to subpoena.

This Motion is made and supported by the pleadings of record herein and is further supported by the Memorandum and the Affidavits of Wayne Willich, James Donoval, and Eric Swartz, all of which are filed contemporaneously herewith. This Motion concerns:

PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - I

A. Defendant City of Sun Valley's Answer to Interrogatory No. 1 and Responses to Requests for Production No. 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 22, 25, 26, 27, 28, 29, 30 and 31;

B. Subpoena categories No. 3, 4, 5, 7, 8, 9, 10, 12, 13, and 15; and

C. Patricia Latham Ball and/or City of Sun Valley's claim of privilege with respect to the same.

By this Motion, Plaintiff Sharon Hammer respectfully requests that the Court:

1. Conduct an *in camera* review of the materials being withheld on grounds of privileges established by the party claiming the same and which are not overcome by the arguments made in her supporting memorandum or at oral argument;

a. Order the production of such documents if the Court finds no applicable privilege or a waiver thereof;

b. Order redacted production to reveal facts, but preserve truly confidential information or attorneys' mental impressions;

2. Order the production of materials in their entirety that are being withheld on unestablished claims of privilege;

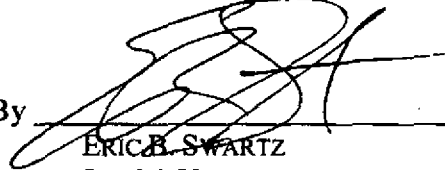
3. Order the production of materials for which any applicable privilege was waived; and

4. Award Ms. Hammer her attorney fees and costs incurred as a result of having to bring this motion.

DATED this 1st day of November, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

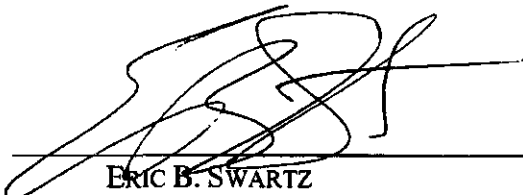
I HEREBY CERTIFY that on this 1st day of November, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
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☒ U.S. Mail
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☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

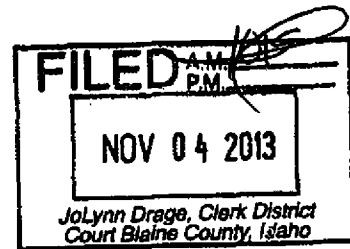


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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO ENFORCE
SUBPOENA AGAINST NON-PARTY
PATRICIA BALL AND TO COMPEL
THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN
DISCOVERY AND IN RESPONSE TO
SUBPOENA**

I. INTRODUCTION

Defendant City of Sun Valley (the "New Administration of Sun Valley")¹ and/or Subpoena respondent Patricia Latham-Ball ("Investigator Ball") have refused to disclose in excess of two hundred (200) emails and other correspondence sought by Ms. Hammer based on asserted attorney-client, work product, and/or common interest privileges. The documents

¹ The "Prior Administration of Sun Valley" of former Mayor of Sun Valley Wayne Willich ("Former Mayor Willich") (whose administration ended on January 3, 2012) and the "New Administration of Sun Valley" are differentiated herein.

sought by Ms. Hammer all relate to a disciplinary investigation of Ms. Hammer that was performed and concluded by the Prior Administration of Sun Valley during November and December of 2011. The materials being sought are directly related to the "adverse action" claims made by Ms. Hammer against the Defendants in this action under the Idaho Protection of Public Employees Act ("IPPEA").

None of the communications involving Investigator Ball are protected by any privileges. Investigator Ball was retained by Former Mayor Willich or the Prior Administration of Sun Valley solely as an "investigator" and not as an attorney. Investigator Ball was not retained by Former Mayor Willich or the Prior Administration of Sun Valley in regard to any litigation matters.

None of the communications involving two other attorneys (Kirtlan Naylor and Adam King) are protected by any privileges either. Neither attorney was retained as legal counsel by the Prior Administration of Sun Valley or the former Mayor of Sun Valley in regard to the disciplinary investigation of Ms. Hammer. Neither attorney was ever asked for any legal advice during the disciplinary investigation of Ms. Hammer. And, while the attorneys may have been allowed to receive a copy of Investigator Ball's report, neither attorney was ever authorized to communicate with Investigator Ball as part of the disciplinary investigation of Ms. Hammer.

Even if Investigator Ball and/or the New Administration of Sun Valley could establish the existence of a privilege, the New Administration of Sun Valley released Investigator Ball's written report to the public. The report of Investigator Ball has been continuously published in the *Idaho Mountain Express* newspaper's on-line website since November of 2012. The release of the written report waives any privilege claims that the New Administration of Sun Valley or Investigator Ball or the other two attorneys would have otherwise been able to make related to

the report or any communications associated with the investigation of Ms. Hammer, whether it be attorney-client, work product, or common interest related.

Counsel for Ms. Hammer has attempted to meet and confer on this matter with counsel for the New Administration of Sun Valley and Investigator Ball. There is no question that the New Administration of Sun Valley and Investigator Ball bear the burden of proving that the communications sought are covered by a privilege. Counsel for the respective clients, however, disagree on whether the privileges asserted by the City of Sun Valley and Investigator Ball are applicable.

II. FACTUAL BACKGROUND

Former Mayor Wayne Willich was the duly elected and the authorized Mayor of Sun Valley until January 3, 2012. As mayor, Former Mayor Willich "shall be the chief administrative official of the city ... and have the superintending control of all the officers and affairs of the city." (I.C. § 50-602.) Former Mayor Willich's decision with respect to employee disciplinary matters are final and binding.²

On November 14, 2011, the Sun Valley City Council under the Prior Administration of Sun Valley emerged from an executive session and passed a resolution ordering Former Mayor Willich to hire a fact-finding investigator in response to allegations of misconduct levied against then City Administrator, Ms. Hammer, by Sun Valley City Council Member Nils Ribi ("Council Member Ribi"), the "Hammer Disciplinary Investigation."³ The resolution did not retain any authority for the Sun Valley City Council to oversee or otherwise be involved in the investigation. Oversight of the investigation was Former Mayor Willich's task pursuant to Idaho

² Affidavit of Wayne Willich ("Willich Aff."), Ex. A, Section 8.6 and 8.7 of the Sun Valley written *Personnel Policies and Procedures*.

³ Willich Aff., ¶¶ 13-24.

Code § 50-602. Based on Council Member Ribi's allegations against Ms. Hammer, Ms. Hammer was placed on administrative leave by the Prior Administration of Sun Valley while the Hammer Disciplinary Investigation proceeded.⁴

Investigator Ball was retained to perform the fact-finding portion of the Hammer Disciplinary Investigation, and her findings were intended for internal purposes, only. Former Mayor Willich testifies that he did not retain Investigator Ball in regard to any potential or threatened litigation:

16) At no time during either the November 11, 2011 or the November 14, 2011 executive sessions of the Sun Valley City Council was there any discussion of using the Hammer Disciplinary Investigation in regards to any potential or threatened litigation. At no time during either the November 11, 2011 or November 14, 2011 executive sessions of the Sun Valley City Council was there any discussions of the Hammer Disciplinary Investigation being commenced to work with the Blaine County Prosecutor's office to participate in a criminal investigation. The direction that I received from the Sun Valley City Council at the November 14, 2011 executive session was solely to perform a disciplinary investigation related to Former Administrator Hammer, solely for internal City Of Sun Valley purposes.⁵

18) Eventually, I agreed to hire Patricia Latham-Ball ("Investigator Ball") to perform the "fact finding" portion of the Hammer Disciplinary Investigation.

19) During the initial discussions I held with Investigator Ball related to the Hammer Disciplinary Investigation, I explained to her that she would be performing an independent internal Sun Valley fact finding investigation related to the misconduct allegations asserted against Former Administrator Hammer. At no time during the discussions that I held with Investigator Ball did we ever discuss that she would be investigating matters related to litigation of any type or preparing any reports to assist Sun Valley in preparation for defending Sun Valley related to any threatened or pending litigation.

⁴ See Exhibit J, Sub-Exhibit A to Affidavit of Plaintiff's Counsel in Support of Plaintiff's Motion to Compel the Production of Documents ("Aff. of Counsel").

⁵ Willich Aff., ¶ 16.

20) I certify that the sole reason that as Mayor of Sun Valley I retained Investigator Ball to perform the Hammer Disciplinary Investigation was to assist me in my duties as the Mayor of Sun Valley to investigate and take necessary disciplinary actions related to Former Administrator Hammer, if required, and for no other reason.

21) On November 23, 2011, I signed the attached engagement letter attached as Exhibit B with Investigator Ball related to her services to perform the Hammer Disciplinary Investigation. I certify that although I discussed the letter with Mayor Elect Briscoe and City Attorney King, no mention was made to either of them that Investigator Ball was being retained to do anything other than an internal Sun Valley disciplinary matter, and in particular, no mention was ever made to or by either Mayor Elect Briscoe or City Attorney King that Investigator Ball's activities were in any way related to threatened or pending litigation.

22) At no time thereafter during my tenure as Mayor of Sun Valley was Investigator Ball retained by Sun Valley, or directed, to perform any legal work or to prepare her report in regards to pending litigation, as Investigator Ball was retained solely to perform an internal Sun Valley disciplinary investigation."

23) It was my intent that Special Investigator Patti Ball was to report solely to me.⁶

The Ball Retainer Agreement provided that Investigator Ball was to provide communications related to the Hammer Disciplinary Investigation to a limited "control group" of Former Mayor Willich, Sun Valley City Attorney Adam King ("City Attorney King"), and Mayor Elect DeWayne Briscoe ("Mayor Elect Briscoe").⁷ However, pursuant to Idaho Code § 50-602, Former Mayor Willich retained sole authority to direct the actions of Investigator Ball during the course of the Hammer Disciplinary Investigation.

⁶ Willich Aff., ¶¶ 16, 18-23.

⁷ Willich Aff., Ex. B, Ball Retainer Agreement. Mayor Elect Briscoe served as President of the Sun Valley City Council prior to January 3, 2012, when he was sworn in as the new Mayor of Sun Valley, taking the place of Former Mayor Willich.

On November 21, 2011, Ms. Hammer filed a lawsuit pursuant to the provisions of the IPPEA against Council Member Ribi, the City of Sun Valley, and City Attorney King ("2011 IPPEA Lawsuit").⁸ In the 2011 IPPEA Lawsuit, Ms. Hammer alleges that the Hammer Disciplinary Investigation and the act of placing Ms. Hammer on administrative leave were in retaliation for Ms. Hammer reporting at least fifteen (15) separate complaints of harassment, hostility, abuse, and assault by Council Member Ribi. The 2011 IPPEA Lawsuit was voluntarily dismissed on January 12, 2012. On June 29, 2012, Ms. Hammer filed the present IPPEA claims ("2012 IPPEA Lawsuit"), naming Mayor Elect Briscoe, Council Member Ribi, and the City of Sun Valley as Defendants.⁹

After Former Mayor Willich had retained Investigator Ball to perform the Hammer Disciplinary Investigation, Sun Valley's insurance company (Idaho Counties Risk Management Program; "ICRMP") assigned attorney Kirtlan Naylor ("Attorney Naylor") to defend the 2011 IPPEA Lawsuit.¹⁰ Prior to the filing of the 2011 IPPEA Lawsuit, Attorney Naylor had no previous connection to the Prior Administration of Sun Valley. Former Mayor Willich was eventually orally informed that Attorney Naylor had been assigned by ICRMP in regard to the 2011 IPPEA Lawsuit.¹¹ Former Mayor Willich immediately objected to Attorney Naylor representing the City of Sun Valley at the same time Attorney Naylor was representing Council Member Ribi and City Attorney King; because Former Mayor Willich perceived this as a

⁸ *Hammer v. Ribi, et al.*, CV-2011-928, Blaine County ("2011 IPPEA Lawsuit"). See also, Exhibit A to Affidavit of James Donoval in Support of Plaintiff's Motion to Compel Production of Documents ("Donoval Aff."), front page of Complaint in 2011 IPPEA Law Suit.

⁹ Council Member Youngman, added to the 2011 IPPEA Lawsuit in December 2011, and City Attorney Adam King were not named in the 2012 IPPEA Lawsuit.

¹⁰ Attorney Naylor was also re-retained by ICRMP to defend the re-filed 2012 IPPEA Lawsuit.

¹¹ Willich Aff., ¶ 25.

conflict of interest.¹² Former Mayor Willich complained to ICRMP and expressly told ICRMP that he was not allowing Attorney Naylor's representation of the City of Sun Valley because of the conflict of interest.

Attorney Naylor immediately appeared in the 2011 IPPEA Lawsuit on behalf of City Attorney King, Council Member Ribí, and eventually appeared in the 2011 IPPEA Lawsuit on behalf Council Member Youngman, apparently with their knowledge and approval. However, Attorney Naylor filed an Appearance in the 2011 IPPEA Lawsuit without ever obtaining formal authority from either the Sun Valley City Council, the Prior Administration of Sun Valley, or Former Mayor Willich to do so, and without ever entering into a written retainer agreement with the Prior Administration of Sun Valley to do so.

On December 12, 2011, Former Mayor Willich met with Mayor Elect Briscoe and City Attorney King to review Investigator Ball's written report related to the Hammer Disciplinary Investigation (the "Authorized Ball Report").¹³ Former Mayor Willich concluded that the Authorized Ball Report was final as to all matters related to the allegations associated with Ms. Hammer and that the Hammer Disciplinary Investigation was over.¹⁴ Former Mayor Willich also concluded that, because the Authorized Ball Report included sensitive personnel issues and was full of what he considered erroneous findings, the Authorized Ball Report should remain only at City Attorney King's office in Ketchum, Idaho, without being released to the public.¹⁵ Former Mayor Willich also states that as of December 12, 2011, he indicated to Investigator Ball that her services to the City of Sun Valley were completed.¹⁶

¹² Willich Aff., ¶¶ 36-38, 67.

¹³ Willich Aff., ¶ 42.

¹⁴ Willich Aff., ¶ 53.

¹⁵ Willich Aff., ¶¶ 56-57.

¹⁶ Willich Aff., ¶ 55.

On December 16, 2011, Former Mayor Willich met with Attorney Naylor.¹⁷ Former Mayor Willich reminded Attorney Naylor that he was not the attorney for Former Mayor Willich or the Prior Administration of Sun Valley's attorney:

67) I did not consider Attorney Naylor to be representing me as Mayor of Sun Valley or to be the legitimate attorney of Sun Valley because he had been forced upon Sun Valley by ICRMP without my approval. I told Attorney Naylor that – if anything – his limited role as an attorney was to defend Council Member Ribí and ICRMP in the Hammer Retaliation Law Suit, and that Sun Valley's interests related to Former Administrator Hammer's claims were vastly different than either Council Member Ribí's or ICRMP's.¹⁸

72) I told Attorney Naylor that the Hammer Disciplinary Investigation and the Hammer Retaliation Law Suit were separate and distinct matters and that Attorney Naylor was not supposed to have had any involvement in the Hammer Disciplinary Investigation.¹⁹

73) I told Attorney Naylor that in defending Council Member Ribí and ICRMP from the Hammer Retaliation Law Suits, Attorney Naylor was clearly on a "different team" than either myself or Sun Valley.²⁰

74) At the December 16, 2011 meeting, I told Attorney Naylor that his acts in trying to control the Hammer Disciplinary Investigation turned the Hammer Disciplinary Investigation into a "witch hunt" of Former Administrator Hammer as part of Attorney Naylor's defense of the Hammer Retaliation Law Suit.²¹

75) At the December 16, 2011 meeting with Attorney Naylor, Attorney Naylor tried to convince me to continue investigating Former Administrator Hammer for misconduct. I specifically told Attorney Naylor that he was not the attorney in regards to the Hammer Disciplinary Investigation and that I considered any and

¹⁷ Willich Aff., ¶ 66.

¹⁸ Willich Aff., ¶ 67.

¹⁹ Willich Aff., ¶ 72.

²⁰ Willich Aff., ¶ 73.

²¹ Willich Aff., ¶ 74.

all matters related to any investigation of Former Administrator Hammer to be concluded.²²

On December 23, 2011, Former Mayor Willich notified Ms. Hammer that she was being placed back on active duty status with full rights and authority as the Sun Valley City Administrator.²³ Former Mayor Willich also advised Ms. Hammer that she had been exonerated of any disciplinary claims, and that the Hammer Disciplinary Investigation was over.²⁴

On January 4, 2012, immediately after Mayor Elect Briscoe was sworn in as the new Mayor of Sun Valley, Ms. Hammer was again placed on administrative leave by Mayor Elect Briscoe and the New Administration of Sun Valley. Ms. Hammer was thereafter terminated from her position as City Administrator on January 19, 2012, by Mayor Elect Briscoe, following a unanimous vote of the Sun Valley City Council, then comprised of Council Member Youngman, Council Member Ribi, Council Member Franz Suhadolnik, and Council Member Michelle Griffith.

Between December 13, 2011 and December 20, 2011, without Former Mayor Willich's knowledge or approval, Attorney Naylor and Investigator Ball worked together to prepare a totally different report than the Authorized Ball Report. The report by Attorney Naylor and Investigator Ball is dated December 20, 2011 ("Unauthorized Ball Report").²⁵ The Unauthorized Ball Report was voluntarily provided to the Blaine County Prosecutor by Attorney Naylor as early as January of 2012.²⁶ The Unauthorized Ball Report has also been continuously published

²² Willich Aff., ¶ 75.

²³ Willich Aff., ¶ 83.

²⁴ Willich Aff., ¶ 84.

²⁵ Willich Aff., Ex. G.

²⁶ Donoval Aff., ¶ 5. Attorney Naylor may also have provided the Unauthorized Ball Report to Blaine County Prosecutor before January 2012, because Prosecutor Jim Thomas states in his report that ICRMP's Attorney Naylor contacted him in December 2011, requesting that Mr. Thomas initiate an investigation into employee misconduct. (Donoval Aff., Ex. G.) If Attorney Naylor did as Mr. Thomas

in the on-line section of the *Idaho Mountain Express* newspaper since at least November of 2012.²⁷

Between the time that Former Mayor Willich concluded the Hammer Disciplinary Investigation and dismissed Investigator Ball, and when the Unauthorized Ball Report was apparently completed on December 20, 2011, there were no communications between Former Mayor Willich and Investigator Ball.²⁸ During this same eight (8) day period of time, the Privilege Log indicates that Investigator Ball and Attorney Naylor communicated on almost a daily basis.²⁹ During that eight (8) day period, Attorney Naylor sent Investigator Ball five (5) emails, while Investigator Ball sent Attorney Naylor nineteen (19) emails.³⁰ Former Mayor Willich was not copied on any of these emails. During this same period of time, Investigator Ball's billing records state that Investigator Ball and Attorney Naylor held at least three one-on-one telephonic conferences.³¹

In late November of 2012, approximately ten (10) months after Former Mayor Willich had left office, the *Idaho Mountain Express* posted an on-line version of the Unauthorized Ball Report.³² Upon review of the same, Former Mayor Willich learned, for the first time, that Investigator Ball had prepared the Unauthorized Ball Report during his tenure as Mayor of Sun Valley – a report that he did not authorize and that he had never before reviewed or

states, he did so without Former Mayor Willich's approval and, as such, was not acting on behalf of the City of Sun Valley.

²⁷ Donoval Aff., ¶ 11.

²⁸ See Aff. of Counsel, Ex. C., Investigator Ball Invoices, and Ex. D, Privilege Log.

²⁹ *Id.*

³⁰ Aff. of Counsel, Ex. D, Privilege Log.

³¹ Willich Aff., Ex. C, indicates telephone conferences between Attorney Naylor and Investigator Ball on December 13, 2011, December 15, 2011 and December 17, 2011.

³² Willich Aff., ¶ 87.

approved.³³ Former Mayor Willich also discovered that the Unauthorized Ball Report differed significantly from the Authorized Ball Report that he had reviewed on December 12, 2011 and had ordered be held in confidence at City Attorney King's office.³⁴ Most significant was the fact that the materials supporting Ms. Hammer's claims about Council Member Ribi's harassment were missing from the Unauthorized Ball Report.³⁵ Also included in the Unauthorized Ball Report are erroneous witness statements and unauthorized findings by Investigator Ball that the allegations against Ms. Hammer were true.³⁶

III. ARGUMENT

A. The Pending Discovery Requests

The communications at issue in this Motion to Compel occurred during the course of the Hammer Disciplinary Investigation and through the preparation of the Unauthorized Ball Report. They are communications that occurred without the authority, direction or knowledge of Former Mayor Willich. They are communications by and between persons who were not authorized to engage in the same. There are communications which do not qualify for any privilege. In general, the communications are between Investigator Ball and Attorney Naylor; Investigator Ball, Attorney Naylor and City Attorney King; and Investigator Ball and other Prior Administration of Sun Valley officials, some of which Attorney Naylor and City Attorney King are copied on.

³³ Willich Aff., ¶¶ 88-89.

³⁴ Willich Aff., ¶ 90.

³⁵ Willich Aff., ¶ 90.

³⁶ Willich Aff., ¶ 91.

Ms. Hammer has requested that both Investigator Ball and the New Administration of Sun Valley produce any and all documents related to the Hammer Disciplinary Investigation.³⁷ Investigator Ball and the New Administration of Sun Valley have both responded that any communications between Investigator Ball, Attorney Naylor or City Attorney King, or between Investigator Ball and other Prior Administration of Sun Valley officials in which Attorney Naylor or City Attorney King were copied, or any other communications to or from Investigator Ball, are either attorney-client privileged or work product privileged documents.³⁸ Attorney Naylor has also asserted that the communications sought by Ms. Hammer are privileged based on some sort of common interest privilege.³⁹

The New Administration of Sun Valley and Investigator Ball, both through Attorney Naylor, have provided a Privilege Log that includes two hundred ten (210) separate emails related to the Hammer Disciplinary Investigation.⁴⁰ The Privilege Log includes one hundred fifty two (152) emails during the remainder of Former Mayor Willich's term as Mayor of Sun Valley through January 3, 2012. Of those one hundred fifty two (152) emails:

- 30 emails were between Attorney Naylor, City Attorney King and Investigator Ball
- 40 emails were between City Attorney King and Investigator Ball
- 65 emails were between Investigator Ball and Attorney Naylor
- 1 email was between City Attorney King and Attorney Naylor
- 16 emails were between Investigator Ball and Sun Valley employees and officials other than Former Mayor Willich

Of the one hundred fifty two (152) emails during the remainder of Former Mayor Willich's tenure as Mayor of Sun Valley, thirty (30) emails were either sent, received or copied

³⁷ Aff. of Counsel, Exs. A and B, Sun Valley's Answers and Responses to First Interrogatories and Request for Production, and Subpoena to Investigator Ball, respectively.

³⁸ Aff. of Counsel, Exs. A and C, Sun Valley's Answers and Responses to First Interrogatories and Request for Production, and Investigator Ball's Response (through her counsel, Attorney Naylor) to Investigator Ball Subpoena, respectively.

³⁹ Aff. of Counsel, Ex. F, Response to Subpoena.

⁴⁰ Aff. of Counsel, Ex. D, Privilege Log.

by Sun Valley employees or officials other than Former Mayor Willich who were not entitled to any attorney-client privilege.

Of the one hundred thirty six (136) emails in the Privilege Log between City Attorney King, Investigator Ball and Attorney Naylor during Former Mayor Willich's remaining tenure as Mayor of Sun Valley, Former Mayor Willich was copied on only thirty-three (33) of the emails (or less than twenty-five percent (25%)). The overwhelming amount of communications between Attorney Naylor, City Attorney King and Investigator Ball during Former Mayor Willich's remaining tenure as Mayor of Sun Valley were being done without Former Mayor Willich's knowledge or approval.

B. Sun Valley and Investigator Ball Cannot Meet Their Burden of Proving the Attorney-Client Privileges They Are Claiming

The burden of showing that information is privileged, and therefore exempt from discovery, is on the party asserting the privilege. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 704, 116 P.3d 27, 34 (2005) citing *Ex parte Niday*, 15 Idaho 559, 98 P. 845 (1908). The attorney-client privilege is described in Rule 502(b) of the Idaho Rules of Evidence, which states:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyer's representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

(I.R.E. 502(b).) Rule 502 requires that privileged communications be: (1) confidential within the meaning of the rule; (2) made between persons described in the rule; and (3) for the purpose of facilitating the rendition of professional legal services to the client. *State v. Allen*, 123 Idaho 880, 885-86, 853 P.2d 625, 630-31 (Ct. App. 1993), overruled on other grounds by *State v. Jones*, 127 Idaho 478, 903 P.2d 67 (1995) and *State v. Gomez*, 126 Idaho 83, 878 P.2d 782 (1994).

The communications with the attorney must have been made in the course of the attorney's official representation of the client. Rule 502(a)(5) defines "confidential communication" as:

(5) Confidential communication. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(I.R.E. 502(a)(5).)

Because the attorney-client privilege impedes the judicial search for truth, it is strictly construed. *In re Walsh*, 623 F.2d 489, 493 (7th Cir. 1980). The party asserting the attorney-client privilege bears the burden of establishing all of its elements on a document-by-document basis:

In sum, a proper analysis as to the withheld documents must be conducted on a document by document basis. If the document would not have been generated 'but for' litigation, it is privileged. However, if it was generated for purposes other than litigation, even though litigation may have been a 'real possibility', it must be disclosed.

United States v. Torf (In re Grand Jury Subpoena), 350 F.3d 1010, 1018 (9th Cir. 2003). "As with the attorney-client privilege, the person asserting the work product privilege cannot make a

blanket assertion of the privilege, but must state document-by-document what information the privilege applies.” *Buckner v. United States*, 1995 U.S. Dist. LEXIS 14107 (D. Idaho 1995) citing *United States v. Bornstein*, 977 F.2d 112, 115 (4th Cir. 1992).

1. Attorney-client privilege does not exist with respect to Investigator Ball’s communications that fall outside of the scope of her representation.

In this case, although Investigator Ball is a licensed attorney, she was not retained to perform legal services. She was hired, only, to conduct a fact-finding employment investigation. In *Diversified Industries, Inc. v. Meredith*, the court found that fact-finding investigations are not the provision of legal services:

We are persuaded that Law Firm was not hired by Diversified to provide legal services or advice. It was employed solely for the purpose of making an investigation of facts ... the work that Law Firm was employed to perform could have been performed just as readily by non-lawyers Thus Diversified has failed to satisfy one of the requisites of a successful claim of attorney-client privilege.

Diversified Industries, Inc. v. Meredith, 572 F.2d 596, 603 (Ct. App. 8th 1978).

Even if Investigator Ball’s fact-finding investigation could be the provision of legal services, her services were terminated on December 12, 2011. That is when the Authorized Ball Report was completed and was provided to Former Mayor Willich, City Attorney King, and Mayor Elect Briscoe, and Investigator Ball was advised that her assignment was over. Any communications which Investigator Ball took thereafter (at least until January 3, 2012, when Former Mayor Willich’s term as Mayor of Sun Valley ended) were not within the scope of Investigator Ball’s work on the Hammer Disciplinary Investigation. *Berry v. McFarland*, 153 Idaho 5, 9, 278 P.3d 407, 411 (2012) (“If the attorney agrees to undertake a specific matter, the relationship terminates when that matter has been resolved.”). A significant number of the

emails and documents being withheld by Investigator Ball and the New Administration of Sun Valley fall within the period of time when her relationship with the Prior Administration of Sun Valley was terminated.

Investigator Ball was not hired to perform legal services and her communications with others regarding the Hammer Disciplinary Investigation do not qualify for the attorney-client privilege. As such, all communications with Investigator Ball should be produced.

- 2. City Attorney King was specifically prohibited from acting as legal counsel incident to the Hammer Disciplinary Investigation, and as such, communications to or from City Attorney King regarding the same were not privileged communications.**

City Attorney King's role in the Hammer Disciplinary Investigation was limited to assisting Former Mayor Willich with finding and hiring a fact-finding investigator.⁴¹ City Attorney King was not asked to perform anything in regard to the Hammer Disciplinary Investigation.⁴² Further, because City Attorney King was named as a defendant in the 2011 IPPEA Lawsuit, it was determined that City Attorney King should not be Investigator Ball's legal contact.⁴³

No communication to or from City Attorney King regarding the Hammer Disciplinary Investigation can be claimed as privileged. The Hammer Disciplinary Investigation was not within the scope of his engagement to provide legal services, and any communications with City Attorney King regarding the Hammer Disciplinary Investigation should be produced.

⁴¹ Willich Aff., ¶ 17.

⁴² Willich Aff., ¶ 17.

⁴³ Donoval Aff., Ex. D, August 28, 2012 Affidavit of Adam King in Support of Non-Party City of Sun Valley's Motion to Quash Subpoena, *Ribi v. Donoval*, Case No. CV-2011-1040, Dist. Ct. for the Fifth Judicial Dist., St. of Idaho.

3. **Attorney Naylor never entered into an authorized attorney-client relationship with either the Prior Administration of Sun Valley or Former Mayor Willich in regard to the Hammer Disciplinary Investigation, nor was any legal advice sought from Attorney Naylor by Former Mayor Willich regarding the Hammer Disciplinary Investigation, making any communications to or from Attorney Naylor not privileged.**

- (a) Attorney Naylor was never formally retained by the Prior Administration of Sun Valley during Former Mayor Willich's tenure to perform any legal work.

Not only did Former Mayor Willich not retain Attorney Naylor or seek advice from Attorney Naylor in regard to the Hammer Disciplinary Investigation, Former Mayor Willich outright rejected Attorney Naylor as the attorney for the Prior Administration of Sun Valley or himself in regard to any matters, including as the Prior Administration of Sun Valley's legal counsel in the 2011 IPPEA Lawsuit. Immediately after learning about Attorney Naylor and his attempt to represent several clients at once, Former Mayor Willich objected to Attorney Naylor's representation of the City of Sun Valley.⁴⁴ Former Mayor Willich complained to ICRMP and expressly told ICRMP that he was not allowing Attorney Naylor's representation of the City of Sun Valley because of the conflict of interest. "As a general rule, no attorney-client relationship exists absent assent by both the putative client and attorney." *Berry v. McFarland*, 153 Idaho 5, 9, 278 P.3d 407, 411 (2012). "[W]here the question as to the attorney's authority is raised, his actual authority must be established" *Muncey v. Children's Home Finding and Aid Society Of Lewiston*, 84 Idaho 147, 153, 369 P.2d 586, 589 (1962).

The lack of any written retainer agreement between Attorney Naylor and the Prior Administration of Sun Valley during Former Mayor Willich's tenure as Mayor of Sun Valley cannot be minimized. All three other attorneys potentially involved in the Hammer Disciplinary Investigation matter (City Attorney King, Investigator Ball, and attorney Brad Miller) obtained

⁴⁴ Willich Aff., ¶¶ 36-38, 67.

written retainer agreements with the Prior Administration of Sun Valley defining their scope of duties to the Prior Administration of Sun Valley.⁴⁵

Attorney Naylor did not enter into a written engagement agreement until after the New Administration of Sun Valley took over from Former Mayor Willich on January 4, 2012. The only hint of an attorney-client relationship before this date is Investigator Ball's August 30, 2012 Affidavit wherein she states that on November 28, 2011, unidentified "Sun Valley officials" informed her that Attorney Naylor was to be her legal contact.⁴⁶ As mayor, Former Mayor Willich "shall be the chief administrative official of the city ... and have the superintending control of all the officers and affairs of the city." (I.C. § 50-602.) Former Mayor Willich never gave Attorney Naylor authority to be the legal contact for Investigator Ball. And, the unidentified "Sun Valley officials" could not have retained Attorney Naylor without Former Mayor Willich's authority. Former Mayor Willich was the only representative of the City of Sun Valley (the client) to retain an attorney for the City of Sun Valley. Sun Valley's only other officials with authority to retain counsel would have been the Sun Valley City Council, but for the Sun Valley City Council to act, they must do so by ordinance or resolution passed by a public vote, including in regard to contracts:

The legislative authority of each city in the state of Idaho, ... shall be vested in a council consisting of either four (4) or six (6) members, one half (1/2) of whom shall be elected at each general city election. Councils shall have such powers and duties as are

⁴⁵ The Sun Valley City Council passed an ordinance in 2008 defining City Attorney King's duties (Donoval Aff., Ex. H). Investigator Ball entered into a written retainer agreement with Sun Valley on or about November 23, 2011 (Aff. of Counsel, Ex. C; Willich Aff., Ex. B). And even attorney Brad Miller entered into a written retainer agreement on December 13, 2011, limiting his role to that of defending a public record request (Donoval Aff., Ex. I).

⁴⁶ Donoval Aff., Ex. E, August 30, 2012 Affidavit of Patricia Latham Ball in Support of Non-Party City of Sun Valley's Motion to Quash Subpoena, *Ribi v. Donoval*, Case No. CV-2011-1040, Dist. Ct. for the Fifth Judicial Dist., St. of Idaho.

now or may hereafter be provided under the general laws of the state of Idaho.

(I.C. § 50-701.)

“At all meetings of the council a majority of the full council shall constitute a quorum for the transaction of business; unless otherwise provided by law, a question before the council shall be decided by a majority of the members present.” (I.C. § 50-705.)

The passage or adoption of every ordinance, and every resolution or order to enter a contract shall be by roll call of the council with the yeas or nays of each being recorded, and to pass or adopt any ordinance or any such resolution or order, a majority of the council shall be required.

(I.C. § 50-902.)

Absent City Council action, Former Mayor Willich unilaterally controlled the “officers and affairs” of Sun Valley pursuant to Idaho Code § 50-602.

Whoever the unidentified “Sun Valley officials” that Investigator Ball referred to were, they were not the client or a representative of the client for the purposes of establishing an attorney-client privilege:

(2) Representative of the client. A “representative of the client” is one having authority to obtain professional legal services, or an employee of the client who is authorized to communicate information obtained in the course of employment to the attorney of the client.

(I.R.E. 502(a)(2).)

Attorney Naylor’s actions regarding the Prior Administration of Sun Valley and Former Mayor Willich during the remainder of Former Mayor Willich’s tenure as Mayor of Sun Valley can only be described as having “gone rogue.” Attorney Naylor filed his Appearance in the 2011 IPPEA Lawsuit on behalf of the Prior Administration of Sun Valley without confirming with

Former Mayor Willich or the Sun Valley City Council that he was doing so. Attorney Naylor then appeared at court hearings of November 29, 2011 and December 15, 2011 on behalf of the Prior Administration of Sun Valley (as well as City Attorney King, Council Member Ribí and Council Member Youngman) without giving any indication to either Former Mayor Willich or the Sun Valley City Council that he was doing so, or how he would be responding to the issues raised at either of those hearings.⁴⁷ Nor did Attorney Naylor ever report back to Former Mayor Willich or the Sun Valley City Council as to what the results had been or what the Court had decided in either of those hearings, or what course the Prior Administration of Sun Valley should be taking in regard to the 2011 IPPEA Lawsuit.⁴⁸ In addition, Former Mayor Willich has confirmed that during the approximately eight (8) remaining weeks of his tenure as Mayor of Sun Valley, Attorney Naylor did not provide any of the communications or settlement offers that Ms. Hammer's legal counsel had provided to Attorney Naylor regarding the 2011 IPPEA Lawsuit to either Former Mayor Willich or the Sun Valley City Council.⁴⁹

Although Attorney Naylor may have been contacting his clients, Council Member Ribí, Council Member Youngman, City Attorney King, and/or ICRMP, about matters during the remaining tenure of Former Mayor Willich, he certainly was not doing so for his putative client, the Prior Administration of Sun Valley (or Former Mayor Willich) during that period. As Former Mayor Willich states in his Affidavit, he never considered Attorney Naylor to have been the authorized attorney for the City of Sun Valley in any regard.⁵⁰ Because there was never a meeting of the minds (formal or informal) between Attorney Naylor and the Prior Administration

⁴⁷ Willich Aff., ¶¶ 63-64. The November 29, 2011 and December 15, 2011 hearings in the 2011 IPPEA Lawsuit related to injunctive relief that Ms. Hammer was seeking related to the administrative leave that she had been subject to.

⁴⁸ Willich Aff., ¶¶ 63-64.

⁴⁹ Willich Aff., ¶ 65.

⁵⁰ Willich Aff., ¶¶ 61, 67-68, 78.

of Sun Valley as to Attorney Naylor being legal counsel for *any* matters, including the 2011 IPPEA Lawsuit, Attorney Naylor had (and has) no basis for claiming an attorney-client privilege as to any matters related to the City of Sun Valley or the Prior Administration of Sun Valley.

Further, we know that the services he was providing through ICRMP could not have been related to the Hammer Disciplinary Investigation. Ms. Hammer contacted ICRMP incident to the investigation, seeking counsel. ICRMP denied her request for counsel stating that the investigation was not covered under the ICRMP-City of Sun Valley Policy of Insurance because it was not a "claim."⁵¹ Further, as Former Mayor Willich states in his Affidavit, during the remainder of his tenure as Mayor of Sun Valley, Attorney Naylor acted solely as counsel for Council Member Ribí and ICRMP in regard to the 2011 IPPEA Lawsuit, and Former Mayor Willich never considered Attorney Naylor to have been the authorized attorney in regard to the 2011 IPPEA Lawsuit or any other matters on behalf of the Prior Administration of Sun Valley or Former Mayor Willich.⁵²

Attorney Naylor was acting outside the scope of the legal services that he was hired to perform – hired by ICRMP to defend Council Member Ribí and City Attorney King in the 2011 IPPEA Lawsuit. He was never hired to do anything with respect to the Hammer Disciplinary Investigation. Any communications involving Attorney Naylor and the Hammer Disciplinary Investigation are not privileged communications and they should be produced.

(b) Attorney Naylor was never retained by the Prior Administration of Sun Valley or Former Mayor Willich to perform any legal work related to the Hammer Disciplinary Investigation.

Even if the Court somehow finds that Attorney Naylor had a legitimate attorney-client relationship with the Prior Administration of Sun Valley related to the 2011 IPPEA Lawsuit,

⁵¹ Donoval Aff., Ex. L.

⁵² Willich Aff., ¶¶ 61, 67-68, 78.

there is no question that Attorney Naylor was never retained to perform any work related to the Hammer Disciplinary Investigation. Former Mayor Willich has stated, under oath, that he sought no legal advice from Attorney Naylor in regard to the Hammer Disciplinary Investigation. He also states that he gave Attorney Naylor no authority to take part in the Hammer Disciplinary Investigation or to communicate with, or direct or advise, Investigator Ball in regard to the Hammer Disciplinary Investigation.

At best, because Attorney Naylor had been assigned to act as counsel in regard to the 2011 IPPEA Lawsuit (against Former Mayor Willich's wishes), Former Mayor Willich allowed Attorney Naylor to passively receive reports and updates (along with Former Mayor Willich, City Attorney King and Mayor Elect Briscoe) from Investigator Ball. Otherwise, Attorney Naylor was not provided any other authority or asked for any legal advice related to the Hammer Disciplinary Investigation that would have qualified any communications to or from Attorney Naylor with the cloak of attorney-client protection. Simply because an attorney is involved in a matter to monitor that matter in relation to any other matter(s) the attorney may be involved in, does not provide any communications to or from the attorney with regard to the monitored matter, privileged. *See, e.g., Dawson v. New York Life Ins. Co.*, 901 F. Supp. 1362, 1367 (N.D. Ill. 1995) ("the attorneys were acting more as 'courier[s] of factual information,' rather than 'legal advisers.' Therefore, the communications of the employees to the attorneys are not subject to the attorney-client privilege.").

None of communications between Attorney Naylor and Investigator Ball, or any communications to or from Attorney Naylor related to the Hammer Disciplinary Investigation, are protected by an attorney-client privilege related to Attorney Naylor. Therefore, all such communications should be produced.

C. The "Work Product" Assertions Are Not Viable

The work product of the adverse party or their attorney is protected from discovery within the limitations of Rule 26(b)(3) of the Idaho Rules of Civil Procedure. *Sanders v. Ayhart*, 89 Idaho 302 (1965) citing *Hickman v. Taylor*, 329 U.S. 495 (1946). The party asserting the work product privilege bears the burden of establishing all of its elements on a document-by-document basis.

In sum, a proper analysis as to the withheld documents must be conducted on a document by document basis. If the document would not have been generated 'but for' litigation, it is privileged. However, if it was generated for purposes other than litigation, even though litigation may have been a 'real possibility', it must be disclosed.

United States v. Torf (In re Grand Jury Subpoena), 350 F.3d 1010, 1018 (9th Cir. 2003). "As with the attorney-client privilege, the person asserting the work product privilege cannot make a blanket assertion of the privilege, but must state document-by-document what information the privilege applies." *Buckner v. United States*, 1995 U.S. Dist. LEXIS 14107 (D. Idaho 1995) citing *United States v. Bornstein*, 977 F.2d 112, 115 (4th Cir. 1992). The proponent work of the product doctrine privilege must prove that the documents or correspondences at issue were prepared or made in anticipation of, or in regard to, litigation. In *Jordan v. United States Dept. of Justice*, the U.S. Court of Appeals for the District of Columbia stated: "The work-product rule does not extend to every written document generated by an attorney; it does not shield from disclosure everything that a lawyer does. Its purpose is more narrow, its reach more modest." *Jordan v. United States Dept. of Justice*, 591 F.2d 753, 775 (D.C. Cir. 1978).

1. Investigator Ball's work was not privileged based on the work product doctrine.

Where, as here, Idaho Code § 50-602 and Section 3.2 of the Sun Valley Personnel Policies and Procedures required that all Prior Administration of Sun Valley employees and agents report directly to Former Mayor Willich, and no one else, during Former Mayor Willich's tenure as the Mayor of Sun Valley, Investigator Ball, City Attorney King and Attorney Naylor had no independent authority to determine what their own role was in regard to their services to the Prior Administration of Sun Valley. Only Former Mayor Willich could determine the scope of Investigator Ball's representation. Former Mayor Willich has testified that Investigator Ball was retained by him only to perform an independent "fact finding investigation." Former Mayor Willich has confirmed, under oath, that Investigator Ball was not retained as an attorney, that Investigator Ball was not retained because of threatened litigation, and that Investigator Ball was not retained because of any potential criminal matters that were to be referred to the Blaine County Prosecutor.

Any materials being withheld based on the work-product doctrine relative to Investigator Ball should be produced, as Investigator Ball was not acting as counsel, not generating anything but facts (as opposed to mental impressions), and was not acting in anticipation of litigation. As such, no work product privilege applies.

2. Attorney Naylor's communications regarding the Hammer Disciplinary Investigation are not privileged based on a work product privilege claim.

Any communications between Attorney Naylor and anyone associated with the Hammer Disciplinary Investigation are not covered by a work product privilege, because Attorney Naylor was not retained to perform any work related to the Hammer Disciplinary Investigation and the Hammer Disciplinary Investigation was not being conducted in regard to any pending litigation.

The Hammer Disciplinary Investigation was commenced before Ms. Hammer filed the 2011 IPPEA Lawsuit. Both the Privilege Log and Investigator Ball's billings confirm that Investigator Ball and Attorney Naylor had no communications until after Investigator Ball had entered into her formal, written Ball Retainer Agreement with Sun Valley on November 23, 2011. In addition, Investigator Ball's billing records show that, after being retained by the Prior Administration of Sun Valley, Investigator Ball recognized that her client was the City of Sun Valley, and that Attorney Naylor was not ("Review emails from client and Kirt Naylor").⁵³ Attorney Naylor was assigned by ICRMP to defend the 2011 IPPEA Lawsuit after the IPPEA Lawsuit was filed. The Hammer Disciplinary Investigation was not in response to litigation. No materials generated by the Hammer Disciplinary Investigation were for purposes of litigation. The Hammer Disciplinary Investigation was a fact-finding investigation.

More importantly, as has been confirmed by Former Mayor Willich, under oath, Attorney Naylor's involvement in the Hammer Disciplinary Investigation was limited to passively receiving copies of reports from Investigator Ball related to the Hammer Disciplinary Investigation (along with City Attorney King and Mayor Elect Briscoe). Attorney Naylor was never authorized to become involved in the Hammer Disciplinary Investigation. He was never authorized to direct Investigator Ball in regard to the same. He was not even authorized to discuss any matters related to the Hammer Disciplinary Investigation with Investigator Ball. None of the communications or documents withheld by Attorney Naylor regarding the Hammer Disciplinary Investigation qualify for work product protections and, as such, they all should be produced.

⁵³ Willich Aff., Ex. C, Investigator Ball billing invoices, November 24, 2011 entry.

D. The “Common Interest” Privilege Does Not Apply

In his letter of August 23, 2013, Attorney Naylor asserts that any of the communications related to the Hammer Disciplinary Investigation are privileged, purportedly because they were done in regard to a “common interest” with the Blaine County Prosecutor, the Idaho Attorney General’s office, and the Forensic Auditor.⁵⁴ Idaho Rule of Evidence 502(b)(3) provides for a common interest privilege: “among clients, their representatives, their lawyers, or their lawyers’ representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication.” (I.R.E. 502(b)(3).) The Comment to this rule states:

IRE 502(b)(3) is intended to provide that when clients who share a common interest in a legal matter are represented by different lawyers they can communicate with each other in an effort to develop a joint strategy or otherwise advance their interests, and their communications in that endeavor will be privileged; that each client involved has a privilege for all such communications; and that this privilege will survive a later falling-out among the parties. The privilege does not, however, extend to communications solely between the clients or their representatives when no lawyer is present. The rationale for this privilege was stated in *In Re: Grand Jury Subpoenas*, 902 F.2d 244, 249 (4th Cir. 1990): “[P]ersons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims.” The original IRE 502(b)(3) was amended to expand the scope of the privilege to include all communications among clients, their representatives, their lawyers, and their lawyer’s representatives when engaged in discussion of common legal concerns.

The person asserting the “common interest” exception to the attorney-client privilege must satisfy four requirements: (a) the communication was made *in the course of joint defense or common interest*; (b) the communication was designed to further the *shared interests*; (c) the

⁵⁴ Aff. of Counsel, Ex. F.

communication is *otherwise privileged*; and (d) *the privilege has not been waived*. *In Re: Bevill, Bresler & Schulman Asset Mgt. Corp.*, 805 F.2d 120 (3rd Cir. 1986).

The assertion of the common interest privilege also requires a showing that the communications are otherwise privileged. As discussed above, the communications at issue were not attorney-client privileged communications or work-product. They are not “otherwise privileged” and do not qualify for the common interest privilege.

As testified to by Former Mayor Willich: (a) there was never an intent that the Hammer Disciplinary Investigation was being commenced in regard to any alleged criminal allegations; (b) neither Attorney Naylor nor anyone else was authorized to work with, or provide the Blaine County Prosecutor (or anyone else) with any information or seek that the Blaine County Prosecutor be contacted regarding any criminal allegations related to Ms. Hammer or the Hammer Disciplinary Investigation without Former Mayor Willich’s explicit approval (which was never given); and (c) the Hammer Disciplinary Investigation and the preparation of the Authorized Ball Report and the Unauthorized Ball Report (and communications being withheld that were incident thereto) were all completed well before they were submitted to the Blaine County Prosecutor and well before the Forensic Audit. Further, even if the timing of events supported a finding of communications “in the course” of the common interests, what was the shared interest between: an internal fact-finding investigation for the purposes of whether employment discipline should be undertaken against Ms. Hammer; the 2011 IPPEA Lawsuit regarding City Council Member Ribí’s harassment of Ms. Hammer; a Forensic Audit of the City; and the Blaine County Prosecutor’s review of the Unauthorized Ball Report? The common interest privilege does not support Investigator Ball and the New Administration of Sun Valley’s withholding of any materials.

E. Even If There Was a Privilege Related to Investigator Ball's Work or Communications About the Same, Any Such Privilege Was Waived by the Publication of the Unauthorized Ball Report

There is no question that the attorney-client privilege, the work product privilege and the common interest privilege can be, and are, waived by the release or publication of documents or communications related to the matters asserted to have been privileged. The privilege is not absolute and may be waived by the client's consent: "When the 'consent' of the client is found, the privilege is said to have been 'waived.'" *Skelton v. Spencer*, 98 Idaho 417, 419, 565 P.2d 1374, 1376 (1977). "Consent" of the client to the disclosure of confidential communications may be either express or implied from the conduct of the client. *Id.* (citing *Grant v. Harris*, 116 Va. 642, 82 S.E. 718, 719 (1914)). Waiver can also occur by implication, a judicially imposed limitation on the attorney-client privilege, imposing an objective standard on waiver rather than the client's subjective intent:

A privileged person would seldom be found to waive, if his intention not to abandon could alone control the situation. There is always also the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. He may elect to withhold or to disclose, but after a certain point his election must remain final.⁵⁵

Further, Rule 510 of the Idaho Rules of Evidence states that the waiver can occur as to the entirety of the privilege if some, but not all, of the confidential materials are disclosed:

A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication.

⁵⁵ *Skelton v. Spencer*, 98 Idaho 417, 419, 565 P.2d 1374, 1376 (1977) quoting Wigmore § 2327 at 635-36.

(I.R.E. 510.) "Accordingly, it has been widely held that voluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject." *Weil v. Investment/Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 23 (9th Cir. 1981). "The privilege which protects attorney-client communications may not be used both as a sword and a shield." *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. Cal. 1992).

[W]hen (the privilege holder's) conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. He may elect to withhold or disclose, but after a certain point his election must remain final.

Weil v. Investment/Indicators, Research & Mgmt., Inc., 647 F.2d 18, 23 (9th Cir. 1981).

In addition, where one government agency voluntarily turns over what it asserts to be attorney-client protected communications or documents to another government agency, the privilege can no longer be reasserted. *Permian Corp. v. United States*, 665 F.2d 1214 (D.C. Cir. 1981). Once there is a waiver, there is no going back.

Subject matter waiver occurs where, as here, the Unauthorized Ball Report itself has been published continuously in the on-line section of the *Idaho Mountain Express* newspaper since at least November of 2012. The Unauthorized Ball Report has also been extensively quoted in the Forensic Audit Report, the Attorney General's Investigator Report, and the Blaine County Prosecutor's Report, all of which have also been continuously published in the on-line section of the *Idaho Mountain Express* newspaper since at least November of 2012. Waiver occurred, too, when the New Administration of Sun Valley provided the Unauthorized Ball Report to the

Blaine County Prosecutor (as well as the Idaho Attorney General's office and the Forensic Auditor).

F. Communications Between Non-Lawyers Council Member Ribi and Mayor Elect Briscoe Are Not Privileged

As has been previously mentioned, during the remainder of Former Mayor Willich's tenure as Mayor of Sun Valley, thirty (30) emails in the Privilege Log were either sent to, sent from, or copied to Sun Valley employees and officials other than Former Mayor Willich, who were not part of the control group entitled to privilege protection, including Mayor Elect Briscoe, Council Member Ribi, Assistant Finance Manager Tammi Hall, and former Sun Valley City Clerk Kelly Ek. None of these individuals are clients nor are they "representatives of the client" as that phrase is used in Idaho Rule of Evidence 502(a)(2). There cannot be an attorney-client privilege or work product privilege that applies to communications with these people. In fact, even if there was an underlying privilege that could be claimed by the City of Sun Valley as the client, disclosure of such communications with non-representatives of the client would waive the privileges.

IV. CONCLUSION

For the foregoing reasons, Plaintiff Sharon Hammer respectfully requests that the Court:

1. Conduct an *in camera* review of the materials being withheld on grounds of privileges established by the party claiming the same and which are not overcome by the arguments herein or at oral argument;
 - a. Order their production if the Court finds no applicable privilege or a waiver thereof;

b. Order their redacted production to reveal facts, but preserve truly confidential information or attorneys' mental impressions;

2. Compel the production of materials in their entirety that are being withheld on un-established claims of privilege;

3. Compel the production of materials for which any applicable privilege was waived; and

4. Award Ms. Hammer her attorney fees and costs incurred as a result of having to bring this motion.

DATED this 1st day of November, 2013.

JONES & SWARTZ PLLC

By



ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

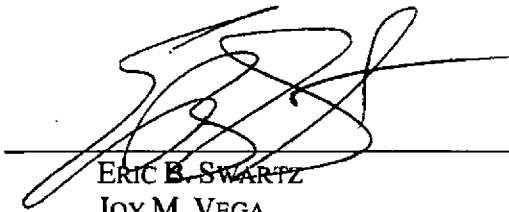
I HEREBY CERTIFY that on this 1st day of November, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

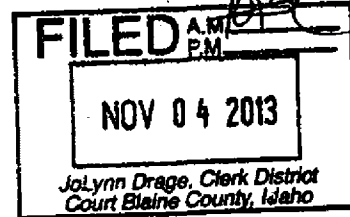
☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
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Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

Case No. CV-2012-479

vs.

CITY OF SUN VALLEY;
NILS RIBI, in his individual and official capacity;
DeWAYNE BRISCOE, in his individual and official
capacity;

Defendants.

AFFIDAVIT OF WAYNE WILlich
FORMER MAYOR OF THE CITY OF SUN VALLEY
IN SUPPORT OF MOTION TO COMPEL

I, WAYNE WILlich, first duly sworn on oath, depose and state as follows:

1) My name is Wayne Willich, and from the first week of January of 2008 to January 3, 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho ("Sun Valley"), and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal

knowledge, and would further swear to such under oath and at trial if required.

2) During my tenure as Mayor of Sun Valley, the attached Section 3.2 of the Sun Valley written Personnel Policies And Procedures (Exhibit A) was in existence and in full force, including that the following provision related to Sun Valley City Attorney Adam King ("City Attorney King") was in full force and effect:

"The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor (emphasis added). All other personnel, including the City Clerk and Treasurer, shall be directly supervised and evaluated by the City Administrator."

3) During my tenure as Mayor of Sun Valley, the attached Section 8.7 of the Sun Valley written Personnel Policies And Procedures (Exhibit A) was in existence and in full force, including that the following provision related to Sun Valley employee disciplinary matters was in full force and effect:

"The decision of the Mayor shall be final and binding (emphasis added)."

The Harassment Allegations Of Former Administrator Hammer Against Council Member Ribi

4) On multiple occasions between April of 2009 and September of 2011, former Sun Valley City Administrator Sharon R. Hammer ("Former Administrator Hammer") reported to me that Sun Valley City Council Member Nils Ribi ("Council Member Ribi") had been hostile to her and had harassed her.

5) In particular, Former Administrator Hammer reported to me that Council Member Ribi had been hostile to her and had harassed her because Former Administrator Hammer had told Council Member Ribi that Former Administrator Hammer took direction from me and that Council Member Ribi was not authorized to give Former Administrator Hammer any directions without my approval.

6) In particular, it is my opinion that thereafter Council Member Ribi treated Former Administrator Hammer improperly and in a hostile manner, when Former Administrator Hammer told Council Member Ribi that Former Administrator Hammer would follow my direction and not

Council Member Ribí's directions in regards to:

- a) April of 2009: Enactment of fund balance, property tax levy, budget and appropriation, council powers, and telecommunication devices policies;
- b) May of 2009: City Council priorities;
- c) July of 2009: Amtrak service resolution;
- d) January of 2010 through May of 2010: City Council powers and ethics;
- e) March of 2010: CAFR report;
- f) June of 2010: Amendment of property tax policy;
- g) August and September of 2010: Contract for Sun Valley resort marketing;
- h) October of 2010: Contract for audit preparation;
- i) November of 2010: Policy on external contracts;
- j) March of 2011: Audit comments, policy on consolidated dispatch and City Council member powers and ethics;
- k) April through September of 2011: Capital improvement plan;
- l) April of 2011: Audit comments and management responses; mandatory garbage collection and marketing alliance bylaws;
- m) July of 2011: Cox Cable contract;
- n) September of 2011: Contract for emergency services and budget amendments.

7) On multiple occasions described in Paragraphs 5 and 6 herein, Former Administrator Hammer described to me that when I was not present in the Sun Valley City Hall, that Council Member Ribí would stand in the doorway of her office and in a hostile manner argue with her when Former Administrator Hammer would tell Council Member Ribí that he needed to get approval from me before Former Administrator Hammer would do something that Council Member Ribí wanted Former Administrator Hammer to do. During several of those incidents, Former Administrator Hammer told me that Council Member Ribí had yelled at her. "The Mayor Does Not Know What His Job Is!". In addition, on several occasions I was present in Sun Valley City Hall and observed Council Member Ribí being confrontational with Former Administrator Hammer in Former Administrator Hammer's office.

8) On multiple occasions related to the incidents described in Paragraph 5 and 6 above, Former Administrator Hammer complained to me about Council Member Ribí's inappropriate and hostile conduct towards her, and that she was becoming more concerned about Council Member's hostility. During several of these discussions, City Attorney King was also present. Based on my discussions with Former Administrator Hammer, on more than one occasion I mentioned Former Administrator Hammer's complaints to Council Member Ribí and publicly reminded Council Member Ribí in Sun Valley City Council meetings to not contact Sun Valley staff members about administrative or operational matters without my knowledge, and to treat all Sun Valley employees in an appropriate manner.

9) Subsequent to Former Administrator Hammer's appointment as the Sun Valley City Administrator in June of 2008, on several occasions former Sun Valley City Council Member Joan Lamb ("Former Council Member Lamb") disclosed to me her concerns about Council Member Ribí's unacceptable and hostile attitude towards Former Administrator Hammer. I told Former Council Member Lamb that I had discussed the issue with Former Administrator Hammer and City Attorney King, as well as Council Member Ribí himself. On several occasions between 2009 and 2011, in public Sun Valley City Council meetings, I remember Former Council Member Lamb chastising Council Member Ribí for his improper contact and treatment of Sun Valley staff members, including Former Administrator Hammer.

10) During public Sun Valley City Council meetings of April 16, 2009; January 21, 2010; May 2, 2010; and, April 21, 2011, I was required to specifically remind Sun Valley City Council Members, and in particular Council Member Ribí, that Sun Valley City Council Members should not contact staff members, including Former Administrator Hammer, and instead should contact me regarding Sun Valley issues, which had been the source of Council Member Ribí's hostility towards, and harassment of, Former Administrator Hammer.

11) On August 2, 2011, I met with City Attorney King at his office in Ketchum, Idaho. I told City Attorney King that since Council Member Ribí's re-election to the Sun Valley City Council in November of 2009, I had been approached by multiple Sun Valley staff members complaining about Council Member Ribí's improper contact and attempts to direct Sun Valley staff members as to what to do, without mine or Former Administrator Hammer's approval. I stated to City Attorney King that

many of the Sun Valley staff members also complained that Council Member Ribi was verbally abusive and hostile towards them. I told City Attorney King that my greatest concern, however, was that Council Member Ribi seemed to target females in particular. I also reminded City Attorney King of the multiple conversations he, I and Former Administrator Hammer had held regarding Council Member Ribi's harassment, abuse and hostility towards Former Administrator Hammer. City Attorney King told me he agreed that Council Member Ribi's conduct towards Former Administrator Hammer was unacceptable, but that because Council Member Ribi was an elected official there was nothing that I could do to discipline Council Member Ribi, other than to discuss the issues with Council Member Ribi and ask Council Member Ribi to act appropriately.

12) On September 15, 2011, at the end of a Sun Valley City Council meeting, Former Administrator Hammer reported to me that Council Member Ribi had assaulted her during a break in the meeting. Former Administrator Hammer told me that when Former Administrator Hammer told Council Member Ribi that she would have to discuss a matter about budget amendments with me rather than doing what Council Member Ribi had asked, Council Member Ribi raised his arms in a threatening manner, came towards her and shouted at her, seriously scaring Former Administrator Hammer. Former Administrator Hammer was visibly upset at Council Member Ribi's actions. Subsequent to the September 15, 2011 incident, I discussed the incident with Council Member Ribi and told Council Member Ribi that he simply cannot act that way towards Former Administrator Hammer.

The Retaining Of Investigator Ball As A "Fact Finding" Investigator Related To The Hammer Disciplinary Investigation And Other Matters

13) On November 11, 2011, a special Sun Valley City Council executive session was held, which Former Administrator Hammer was not allowed to attend, in which Council Member Ribi and former Sun Valley Treasurer Michelle Frostenson ("Former Treasurer Frostenson") made undocumented allegations of misconduct against Former Administrator Hammer.

14) At the November 11, 2011 special Sun Valley City Council executive session, Council Member Ribi, Sun Valley mayor elect DeWayne Briscoe ("Mayor Elect Briscoe") and Sun Valley City Council Member Robert Youngman ("Council Member Youngman") determined not to allow Former Administrator Hammer to respond to any of the misconduct

allegations that were made against her and requested that I seek Former Administrator Hammer's immediate resignation. Former Administrator Hammer refused to resign.

15) On November 14, 2011, a second special Sun Valley City Council executive session was held, which Former Administrator Hammer was also not allowed to attend, in which the Sun Valley City Council directed that I commence an investigation of the misconduct allegations that Council Member Ribi and Former Treasurer Frostenson had made against Former Administrator Hammer (the "Hammer Disciplinary Investigation").

16) At no time during either the November 11, 2011 or the November 14, 2011 executive sessions of the Sun Valley City Council was there any discussion of using the Hammer Disciplinary Investigation in regards to any potential or threatened litigation. At no time during either the November 11, 2011 or November 14, 2011 executive sessions of the Sun Valley City Council was there any discussions of the Hammer Disciplinary Investigation being commenced to work with the Blaine County Prosecutor's office to participate in a criminal investigation. The direction that I received from the Sun Valley City Council at the November 14, 2011 executive session was solely to perform a disciplinary investigation related to Former Administrator Hammer, solely for internal Sun Valley purposes.

17) After the executive session of the Sun Valley City Council of November 14, 2011, I directed City Attorney King to obtain a list of possible independent investigators to perform the fact finding portion of the Hammer Disciplinary Investigation. I gave City Attorney King no other authority of any kind in regards to the Hammer Disciplinary Investigation.

18) Eventually, I agreed to hire Patricia Latham-Ball ("Investigator Ball") to perform the "fact finding" portion of the Hammer Disciplinary Investigation.

19) During the initial discussions I held with Investigator Ball related to the Hammer Disciplinary Investigation, I explained to her that she would be performing an independent internal Sun Valley fact finding investigation related to the misconduct allegations asserted against Former Administrator Hammer. At no time during the discussions that I held with

Investigator Ball did we ever discuss that she would be investigating matters related to litigation of any type or preparing any reports to assist the Sun Valley in preparation for defending Sun Valley related to any threatened or pending litigation.

20) I certify that the sole reason that as Mayor of Sun Valley I retained Investigator Ball to perform the Hammer Disciplinary Investigation was to assist me in my duties as the Mayor of Sun Valley to investigate and take necessary disciplinary actions related to Former Administrator Hammer, if required, and for no other reason.

21) On November 23, 2011, I signed the engagement letter attached as Exhibit B with Investigator Ball related to her services to perform the Hammer Disciplinary Investigation. I certify that although I discussed the letter with Mayor Elect Briscoe and City Attorney King, no mention was made to either of them that Investigator Ball was being retained to do anything other than in regards to an internal Sun Valley disciplinary matter, and in particular, no mention was ever made to or by either Mayor Elect Briscoe or City Attorney King that Investigator Ball's activities were in any way related to threatened or pending litigation.

22) At no time thereafter during my tenure as Mayor of Sun Valley was Investigator Ball retained by Sun Valley, or directed, to perform any legal work or to prepare her report in regards to pending litigation, as Investigator Ball was retained solely to perform an internal Sun Valley disciplinary fact finding investigation.

23) It was my intent at all times that Investigator Patti Ball was to report solely to me.

24) I certify that attorney Kirtlan Naylor ("Attorney Naylor") had no input in regards to the selection of Investigator Ball as an investigator nor did I discuss with Attorney Naylor in any way the duties of Investigator Ball in regards to the Hammer Disciplinary Investigation prior to, or after, the signing of the engagement letter attached herein as Exhibit B.

Attorney Naylor Was Directed To Not Have Any Role In The Hammer Disciplinary Investigation

25) On or about November 23, 2011, I was orally notified that Attorney Naylor had been appointed by ICRMP to defend the law suit that had been filed by Former Administrator Hammer against Sun Valley, Council Member Ribi and City Attorney King (the "Hammer Retaliation Law Suit").

26) Subsequent to retaining Investigator Ball, I agreed that Attorney Naylor could receive copies of Investigator Ball's reports and be updated by Investigator Ball as a group with myself, Mayor Elect Briscoe and City Attorney King as to the status of the Hammer Disciplinary Investigation. However, I deny that I ever gave Attorney Naylor any authority to direct or actively participate in any way in the Hammer Disciplinary Investigation, including that I never authorized Attorney Naylor to directly communicate with Investigator Ball.

27) Subsequent to the hiring of Investigator Ball, I never authorized Investigator Ball to report to, or even speak to, Attorney Naylor, in regards to the Hammer Disciplinary Investigation. I did have a discussion with Investigator Ball related to Attorney Naylor in which I agreed that Attorney Naylor could be part of the group report Investigator Ball would eventually make to City Attorney King, Mayor Elect Briscoe and myself related to Investigator Ball's factual findings. However, at no time did I authorize Investigator Ball to communicate with Attorney Naylor, and not myself, without my knowledge.

There Was Never A Joint Investigation Intended Or Authorized With The Blaine County Prosecutor

28) At no time during my tenure as Mayor of Sun Valley through January 3, 2012, did I authorize or seek that the Blaine County Prosecutor institute a criminal investigation of either Former Administrator Hammer or any other Sun Valley employee, nor did I provide Attorney Naylor with any authority to do so without my specific approval, which Attorney Naylor never received.

29) At no time during my tenure as Mayor of Sun Valley did I ever intend that Sun Valley would participate jointly with either the Blaine County Prosecutor or any other government agency or entity in regards to an investigation of Former Administrator Hammer or any other Sun Valley employees, nor did I ever direct any Sun Valley employee, official or agent to work jointly with either the Blaine County Prosecutor or any other government agency or entity in regards to an investigation of Former Administrator Hammer or any other Sun Valley employees.

Attorney Naylor Improperly Influenced The Hammer Disciplinary Investigation

30) Subsequent to retaining Investigator Ball to perform the "fact finding" portion of the Hammer Disciplinary Investigation, I did not discuss the Hammer Disciplinary Investigation with Investigator Ball until mid-December of 2011 when Investigator Ball had prepared her written report, to ensure that there was no insinuation that I was somehow seeking to influence the findings of the Hammer Disciplinary Investigation.

31) To the best of my recollection, on November 28, 2011, Investigator Ball did not contact me by telephone, or any other means, and request my permission to discuss the Hammer Disciplinary Investigation with Attorney Naylor, or that Investigator Ball be allowed to report to Attorney Naylor in regards to any aspect of the Hammer Disciplinary Investigation, nor did Investigator Ball ever subsequently obtain my permission to discuss the Hammer Disciplinary Investigation with Attorney Naylor or report to Attorney Naylor in regards to the Hammer Disciplinary Investigation.

32) On November 29, 2011, during the course of Investigator Ball's interview with me related to the Hammer Disciplinary Investigation, I disclosed to Investigator Ball that on numerous occasions over the prior three years that Former Administrator Hammer had reported to me that Council Member Ribi had harassed and been hostile to Former Administrator Hammer, and that on several occasions I was required to tell Council Member Ribi that he should not be contacting Former Administrator Hammer without my approval or treating Former Administrator Hammer in a hostile manner.

33) At the November 29, 2011 interview with Investigator Ball, I directed Investigator Ball to expand her factual investigation to include performing an investigation of Former Administrator Hammer's complaints of harassment against Council Member Ribi. I specifically directed Investigator Ball to obtain detailed facts related to Council Member Ribi's harassment of Former Administrator Hammer from myself, Former Administrator Hammer, Former Treasurer Frostenson, former Sun Valley City Clerk Kelly Ek ("Former Clerk Ek"), Former Council Member Lamb and Council Member Youngman.

34) Sometime subsequent to the retention of Investigator Ball, I discovered that Investigator Ball and Attorney Naylor were involved in extensive discussions related to the Hammer Disciplinary Investigation, without my knowledge or my approval.

35) Subsequent to my discovery of the communications between Investigator Ball and Attorney Naylor in regards to the Hammer Disciplinary Investigation, Investigator Ball thereafter began reporting to Attorney Naylor rather than myself, in violation of the directions I had given to Investigator Ball.

36) Subsequent to my discovery of the surreptitious actions of Investigator Ball and Attorney Naylor in regards to the Hammer Disciplinary Investigation, I discussed the matter with Attorney Naylor, and told Attorney Naylor that I believed that he was improperly seeking to influence the Hammer Disciplinary Investigation. Attorney Naylor's response to me was that he was paid by and represented the Idaho Counties Risk Management Program ("ICRMP"), Sun Valley's insurer, and that he did not report to me, and that his job was to protect ICRMP against civil claims that were being made by Former Administrator Hammer against Council Member Ribi in the Hammer Retaliation Law Suit.

37) Subsequent to my conversation with Attorney Naylor, I contacted an ICRMP official and asked that Attorney Naylor be replaced as the ICRMP supplied counsel in the Hammer Retaliation Law Suit, but was told by the ICRMP representative that ICRMP had the sole direction in determining who the legal counsel would be related to the Hammer Retaliation Law

Suit.

38) Subsequent to my conversation with ICRMP officials, Investigator Ball and Attorney Naylor continued to actively communicate in regards to the Hammer Disciplinary Investigation, without my approval or authority, and Investigator Ball thereafter continued to take direction related to the Hammer Disciplinary Investigation from Attorney Naylor rather than myself.

39) I have reviewed Investigator Ball's billings for the period of November 27, 2011 to January 4, 2012 (Exhibit C), which clearly indicates that immediately upon her appointment as the fact finding investigator related to the Hammer Disciplinary Investigation, Investigator Ball began reporting to Attorney Naylor rather than to me, and continued to do so through my tenure as Mayor of Sun Valley which ended on January 3, 2012. Investigator Ball's billings indicate that there were at least twenty one (21) correspondences between Investigator Ball and Attorney Naylor during a two month period, when Investigator Ball was supposed to have been independent of Attorney Naylor's influence in regards to the Hammer Disciplinary Investigation and was instead to report solely to me.

40) Ultimately, I found that Attorney Naylor and Investigator Ball conspired to turn what was supposed to be an independent investigation of several matters, into a purposeful prosecution of Former Administrator Hammer and a method to specifically seek to exonerate Council Member Ribí from Former Administrator Hammer's serious allegations of harassment, abuse and hostility by Council Member Ribí.

The Authorized And Final Ball Report Of December 12, 2011

41) On December 9, 2011, I met with Mayor Elect Briscoe and City Attorney King at City Attorney King's office in Ketchum, Idaho and reviewed Investigator Ball's first draft of a written report related to the Hammer Disciplinary Investigation. Over the weekend of December 9, 2011 through December 11, 2011, Investigator Ball made numerous corrections and modifications to the draft report.

42) On December 12, 2011, I again met with Mayor Elect Briscoe and City Attorney King at City Attorney King's office in Ketchum, Idaho and reviewed Investigator Ball's revised written investigation report related to the disciplinary investigation (the "Authorized Ball Report").

43) Attached are the relevant pages of Investigator Ball's invoices (Exhibit C) and City Attorney King's invoices (Exhibit D) for the period which confirm the December 9, 2011 and December 12, 2011 meetings to review the Authorized Ball Report. The invoice of Investigator Ball (Exhibit C) confirms that on December 12, 2011 that Investigator Ball presented to me a singular report, which was the Authorized Ball Report. The invoice of City Attorney King (Exhibit D) confirms that as of December 12, 2011 the Authorized Ball Report was a singular report and was "final".

44) Based on my own personal knowledge and a mini-investigation of several allegations of misconduct against Former Administrator Hammer, I was able to take apart several false factual claims made by Investigator Ball in the Authorized Ball Report related to Former Administrator Hammer.

45) There were issues in the Authorized Ball Report related to allegations of financial misconduct of Former Treasurer Frostenson that I believed had not been fully investigated by Investigator Ball or were otherwise simply fallacious.

46) There were issues in the Authorized Ball Report related to allegations of harassment by Former Administrator Hammer against Council Member Ribi, which because of my personal knowledge of the incidents, were simply fallacious. Investigator Ball failed to adequately investigate the allegations of harassment against Council Member Ribi that I had directed her to investigate, including that Investigator Ball had not allowed Former Administrator Hammer to detail all of the incidents of harassment by Council Member Ribi that she had complained to me about over the course of the prior three years, nor did Investigator Ball interview Former Council Member Lamb related to Council Member Ribi's hostility towards Former Administrator Hammer and women in general.

47) Based on the conversations with Attorney Naylor and Special Investigator Ball at the December 9, 2011 and December 12, 2011 meetings, it became clear to me that during the course of the Special Investigation that both Attorney Naylor and Special Investigator Ball were seeking to find anything that would substantiate Council Member Ribí's public assertions that Former Administrator Hammer had done something "criminal" in order to protect ICRMP from potential damage claims asserted by Former Administrator Hammer in the Hammer Retaliation Law Suit, rather than performing an "independent" investigation.

48) Based on the obvious errors Investigator Ball made in the Authorized Ball Report, it brought the entire Authorized Ball Report into question. And, based on Attorney's Naylor's improper influence over Investigator Ball, I considered the Authorized Ball Report to have been mishandled, poorly done, and it looked like some kind of attack piece that was crafted or put together possibly by Attorney Naylor.

49) After reviewing the Authorized Ball Report related to the issues associated with Former Administrator Hammer, and in performing my own investigation, I determined that the Authorized Ball Report was flawed and that none of the allegations against Former Administrator Hammer that had been raised by either Former Treasurer Frostenson or Council Member Ribí, or had been investigated by Investigator Ball, required any further disciplinary investigation or disciplinary actions against Former Administrator Hammer, because each allegation was covered by some specific authorization that either I or the Sun Valley City Council had provided Former Administrator Hammer as was allowed pursuant to Former Administrator Hammer's written employment agreement with Sun Valley and Sun Valley policies.

50) After reviewing the Authorized Ball Report and discussing matters with Investigator Ball, I determined that Former Administrator Hammer had not violated any Sun Valley Personnel Policies And Procedures and that Former Administrator Hammer had done nothing which she should be disciplined for. I also determined that there could not possibly be anything that Former Administrator Hammer could be criminally charged with.

51) After the presentation of the Authorized Ball Report, I concluded that the Authorized Ball Report was final as to all matters related to the allegations associated with Former Administrator Hammer.

52) I certify that as of December 12, 2011, I considered the Authorized Ball Report to be the final work product requested of Investigator Ball.

53) As of December 12, 2011, I considered any investigation of Former Administrator Hammer was complete as far as I was concerned, and the Authorized Ball Report that Investigator Ball prepared and presented to City Attorney King, Mayor Elect Briscoe and myself on December 12, 2011, related to any allegations of misconduct against Former Administrator Hammer, was finished and final. As far as I was concerned, as of December 12, 2011, the Hammer Disciplinary Investigation was over, and it was done.

54) After Investigator Ball presented the Authorized Ball Report that I reviewed at City Attorney King's office on December 12, 2011, I considered Investigator Ball to have concluded any and all work she had been assigned to perform on behalf of Sun Valley.

55) I certify that as of December 12, 2011, I considered the Authorized Ball Report to be the final work product requested of Investigator Ball, and indicated to Investigator Ball that her services to Sun Valley were completed.

56) As the matters in the Authorized Ball Report included sensitive personnel issues, I directed that the Authorized Ball Report would only be able to be reviewed by current Sun Valley City Council Members, and no one else, and only at City Attorney King's office in Ketchum, Idaho.

57) I also determined that because the Authorized Ball Report was full of flaws and erroneous findings and that the Authorized Ball Report should remain only at City Attorney King's office in Ketchum, Idaho without being released to the public.

58) At no time after December 12, 2011, did I authorize City Attorney King, Attorney Naylor, Investigator Ball or any other Sun Valley official or employee to release the Authorized Ball Report or any information related to the Hammer Disciplinary Investigation to the Blaine County Prosecutor or to anyone else during my tenure as Mayor of Sun Valley through January 3, 2012.

59) Based on the Authorized Ball Report, and my authority to make final and binding disciplinary findings pursuant to section 8.7 of the Sun Valley Personnel Policies And Procedures, I concluded that Former Administrator Hammer had not committed any infractions of Sun Valley policies related to a) her use of a Sun Valley automobile because I had authorized her to use the automobile at all hours for both Sun Valley and personal use, b) her use of flex time to compensate her for non-standard work hours she had been required to work over the course of 2008 through 2011 because I had authorized her to use the flex time, and, c) her use of a Sun Valley credit card because Former Treasurer Frostenson and the Sun Valley City Council had already specifically approved as legitimate all expenditures Former Administrator Hammer had incurred on the Sun Valley credit card.

60) Based on my findings related to allegations against Former Administrator Hammer, and my authority pursuant to Section 8.7 of the Sun Valley Personnel Policies And Procedures, I considered all disciplinary actions against Former Administrator Hammer to be concluded as of December 12, 2011.

The December 16, 2011 Meeting With Attorney Naylor

61) I certify that from the moment he was appointed by ICRMP as defense counsel in regards to the Hammer Retaliation Law Suit, I considered Attorney Naylor to have acted in contradiction to my directions and authority and to the best interest of Sun Valley, in favor of his defense of Council Member Ribí and ICRMP, and therefore I never considered or recognized Attorney Naylor to have been either Sun Valley's attorney or my personal attorney.

62) I believe that Attorney Naylor purposefully never sought to enter into a written retainer agreement with Sun Valley defining his role as counsel in regards to the Hammer Retaliation Law Suit to fraudulently later assert that he was given broader authority as an attorney than he was ever intended to be, or actually was, provided.

63) Attorney Naylor never discussed with me, or the Sun Valley City Council at a Sun Valley City Council meeting, that he was appearing in Court on November 29, 2011 on behalf of Sun Valley in regards to the Hammer Retaliation Law Suit, nor did I provide Attorney Naylor with any directions as to how to respond to matters at issue at the November 29, 2011 hearing. Any arguments or discussions that Attorney Naylor held with the Court at the November 29, 2011 hearing on behalf of Sun Valley were done without my explicit or implicit authority or approval. Subsequent to the November 29, 2011 hearing in the Hammer Retaliation Law Suit, Attorney Naylor never discussed with me, or the Sun Valley City Council at a Sun Valley City Council meeting, the results of the November 29, 2011 Court hearing, or the direction that he was thereafter going to take in the Hammer Retaliation Law Suit.

64) Attorney Naylor also never discussed with me, or the Sun Valley City Council at a Sun Valley City Council meeting, that he was appearing in Court on December 15, 2011 on behalf of Sun Valley in regards to the Hammer Retaliation Law Suit, nor did I provide Attorney Naylor with any directions as to how to respond to matters at issue at the December 15, 2011 hearing. Any arguments or discussions that Attorney Naylor held with the Court at the December 15, 2011 hearing on behalf of Sun Valley were done without my explicit or implicit authority or approval. Subsequent to the December 15, 2011 hearing in the Hammer Retaliation Law Suit, Attorney Naylor never discussed with me, or the Sun Valley City Council at a Sun Valley City Council meeting, the results of the December 15, 2011 Court hearing, or the direction that he was thereafter going to take in the Hammer Retaliation Law Suit.

65) I have subsequently discovered that prior to, and during the course of, the Hammer Disciplinary Investigation, several written settlement offers related to Former Administrator Hammer and the Hammer Retaliation Law Suit were served upon Attorney Naylor by Former Administrator Hammer's legal counsel, which Attorney Naylor never provided to either me or

the Sun Valley City Council. Nor did Attorney Naylor ever request that a Sun Valley City Council meeting be held to discuss the settlement proposals put forth by Former Administrator Hammer.

66) On December 16, 2011, I met with Attorney Naylor at Attorney Naylor's offices in Boise.

67) I certify that at the meeting of December 16, 2011, I did not consider Attorney Naylor to be representing me as Mayor of Sun Valley or to be the legitimate attorney of Sun Valley because he had been forced upon Sun Valley by ICRMP without my approval. I told Attorney Naylor that – if anything – his limited role as an attorney was to defend Council Member Ribi and ICRMP in the Hammer Retaliation Law Suit, and that Sun Valley's interests related to Former Administrator Hammer's claims were vastly different than either Council Member Ribi's or ICRMP's.

68) I certify that in my discussion with Attorney Naylor on December 16, 2011, I did not consider that I was seeking any legal advice from Attorney Naylor nor did I consider that Attorney Naylor was providing me with any legal advice. I did not consider the conversations with Attorney Naylor on December 16, 2011 to be attorney-client conversations.

69) At the December 16, 2011 meeting with Attorney Naylor, I told Attorney Naylor that I considered Former Administrator Hammer to be a "whistleblower" who was entitled to protection from Council Member Ribi and from any retaliation for having disclosed the multiple acts of harassment against Former Administrator Hammer. Attorney Naylor responded that the definition of what a "whistleblower" was grey, and that Former Administrator Hammer was not considered a "whistleblower". Attorney Naylor could not differentiate between why Former Administrator Hammer should not be considered a "whistleblower", but why Former Treasurer Frostenson and Former Clerk Ek were considered as "whistleblowers".

70) It is my belief that Attorney Naylor refused to recognize Former Administrator Hammer as a "whistleblower" subject to necessary protections, as a strategy to protect Council

Member Ribí and ICRMP from Former Administrator Hammer's legitimate claims that Council Member Ribí had harassed Former Administrator Hammer, and that Council Member Ribí was now retaliating against Former Administrator Hammer for complaining about it.

71) At the December 16, 2011 meeting, I told Attorney Naylor that Council Member Ribí's, Mayor Elect Briscoe's and Council Member Youngman's actions at the special Sun Valley City Council executive session of November 11, 2011, and thereafter, regarding the allegations of misconduct against Former Administrator Hammer, was a "kangaroo court", especially because Council Member Ribí, Mayor Elect Briscoe and Council Member Youngman refused to let Former Administrator Hammer directly confront them to answer the allegations of misconduct that were asserted against Former Administrator Hammer.

72) At the December 16, 2011 meeting, I told Attorney Naylor that the Hammer Disciplinary Investigation and the Hammer Retaliation Law Suit were separate and distinct matters and that Attorney Naylor was not supposed to have had any involvement in the Hammer Disciplinary Investigation.

73) At the December 16, 2011 meeting, I told Attorney Naylor that in defending Council Member Ribí and ICRMP from the Hammer Retaliation Law Suits, Attorney Naylor was clearly on a "different team" than either myself or Sun Valley.

74) At the December 16, 2011 meeting, I told Attorney Naylor that his acts in trying to control the Hammer Disciplinary Investigation turned the Hammer Disciplinary Investigation into a "witch hunt" of Former Administrator Hammer as part of Attorney Naylor's defense of the Hammer Retaliation Law Suit.

75) At the December 16, 2011 meeting with Attorney Naylor, Attorney Naylor tried to convince me to continue investigating Former Administrator Hammer for misconduct. I specifically told Attorney Naylor that he was not the attorney in regards to the Hammer Disciplinary Investigation and that I considered any and all matters related to any investigation of Former Administrator Hammer to be concluded.

76) At the December 16, 2011 meeting with Attorney Naylor, I told Attorney Naylor that I still had concerns about the misconduct of Former Treasurer Frostenson which I had discovered during the Hammer Disciplinary Investigation. However, I told Attorney Naylor that the issues related to Former Treasurer Frostenson were not his concern as part of his defense of the Hammer Retaliation Law Suit.

77) At the December 16, 2011 meeting with Attorney Naylor, I provided Attorney Naylor with an oral history of the multitude of complaints that Former Administrator Hammer had made about Council Member Ribi's harassment of Former Administrator Hammer and the several times I notified Council Member Ribi that his hostile conduct towards Former Administrator Hammer needed to cease. I told Attorney Naylor that I did not believe that the Sun Valley investigation regarding whether Council Member Ribi had violated the Sun Valley Personnel Policies And Procedures related to the harassment of Former Administrator Hammer, as Investigator Ball did not adequately interview Former Administrator Hammer or myself. In addition, Investigator Ball had been given direct orders to interview both Former Council Member Lamb and Council Member Youngman related to Council Member Ribi's harassment of Former Administrator Hammer, and simply refused to do so. I told Attorney Naylor that he was not the attorney related to the investigation of Council Member Ribi's harassment of Former Administrator Hammer either. I told Attorney Naylor that I was considering hiring a new investigator to perform a new, internal, Sun Valley investigation of Former Administrator Hammer's harassment complaints against Council Member Ribi, because of Attorney Naylor's improper influence over Investigator Ball's previous investigation, but that I may not have enough time before the end of my term as Mayor of Sun Valley to do so. I told Attorney Naylor that I had concerns that something potentially needed to be done to protect Former Administrator Hammer from Council Member Ribi.

78) At the December 16, 2011 meeting, I told Attorney Naylor that I recognized that he was trying to defend Council Member Ribi against the Hammer Retaliation Law Suit that ICRMP would have to pay for, but that I had a separate obligation to protect Former Administrator Hammer before I left office as Mayor of Sun Valley on January 3, 2012, which

Attorney Naylor was not part of.

79) At the December 16, 2011 meeting, Attorney Naylor told me that he wanted to forward information to the Blaine County Prosecutor regarding potential criminal charges against Former Administrator Hammer and other Sun Valley employees. I told Attorney Naylor that doing so was not part of his job in defending against the Hammer Retaliation Law Suit. I told Attorney Naylor that nothing that Former Administrator Hammer had done could possibly be considered to have been "criminal" because everything that she had been accused of had either been approved by myself or the Sun Valley City Council. However, I told Attorney Naylor that if he found anything that he could convince me of was "criminal" related to any Sun Valley employees, that I would allow him to turn over the information to the Blaine County Prosecutor. Attorney Naylor gave me the document attached as Exhibit E, which he said he would keep in his files if he ever needed it, which I signed. However, I told Attorney Naylor that I expected him to obtain my specific approval before he turned over any documents to the Blaine County Prosecutor. In addition, I specifically told Attorney Naylor that he was not to provide the Authorized Ball Report that I directed stay in City Attorney King's possession at City Attorney King's Ketchum, Idaho office to the Blaine County Prosecutor under any circumstances because of its multitude of flaws, errors and unauthorized and unwarranted conclusions. Subsequent to my signing the document attached as Exhibit E, and prior to the end of my term as Mayor of Sun Valley on January 3, 2012, Attorney Naylor never sought my approval to forward any information to the Blaine County Prosecutor. If Attorney Naylor provided any information to the Blaine County Prosecutor prior to my term of office as Mayor of Sun Valley ending on January 3, 2012, Attorney Naylor did so without my approval and against my explicit instructions.

80) At the December 16, 2011 meeting, I told Attorney Naylor that I believed that immediately after Mayor Elect Briscoe was sworn in as the new Mayor of Sun Valley that Former Administrator Hammer would be terminated as the Sun Valley City Administrator. I told Attorney Naylor that I was going to spend the next week trying to work out a settlement between Former Administrator Hammer and the new Sun Valley City Council.

81) At the December 16, 2011 meeting with Attorney Naylor, Attorney Naylor told me

that as long as Sun Valley continued to investigate Former Treasurer Frostenson and Council Member Ribí, that anyone who was placed on administrative leave should be provided with a notice regarding what their obligations were while on administrative leave. I signed the documents attached as Exhibit F regarding Former Administrator Hammer. At the December 16, 2011 meeting, I also remember signing the same type of documents regarding Former Treasurer Frostenson, Former Clerk Ek, former Sun Valley Fire Chief Jeff Carnes, former Sun Valley Fire Department employee Tina Carnes, and former Sun Valley firefighter Nick Carnes, all of whom were also on administrative leave pending investigations. I did not consider the signing of the forms provided to me by Attorney Naylor as meaning that I had entered into any form of attorney-client relationship with Attorney Naylor nor did I consider that Attorney Naylor's role as the attorney for Council Member Ribí and ICRMP related to Hammer Retaliation Law Suit to have been expanded because I signed the documents.

**Former Administrator Hammer Is Returned To Active Duty And The Hammer
Disciplinary Investigation Formally Ends**

82) During the week of December 16, 2011 through December 23, 2011, I sought to discuss possible alternatives to settling matters between Sun Valley and Former Administrator Hammer, but I could not get Mayor Elect Briscoe or Council Member Youngman to discuss any settlement options with me because neither Mayor Elect Briscoe or Council Member Youngman would return my calls.

83) On December 23, 2011, I notified Former Administrator Hammer that she was being placed back on active duty status with full rights and authority as the Sun Valley City Administrator.

84) I thereafter gave Former Administrator Hammer notice that she had been exonerated of any disciplinary claims and that I considered the Hammer Disciplinary Investigation and all matters related to Former Administrator Hammer concluded.

85) During the week of December 27, 2011 through December 30, 2011, I sought to call a special Sun Valley City Council meeting to seek to have Former Treasurer Frostenson

terminated as the Sun Valley Treasurer for misconduct and insubordination, and to discuss settlement options related to Former Administrator Hammer, but Mayor Elect Briscoe, Council Member Ribí and Council Member Youngman refused to acknowledge or attend such a meeting.

86) I have subsequently discovered that between December 23, 2011 when I took Former Administrator Hammer off of administrative leave, and January 3, 2012 when my term as Mayor of Sun Valley expired, several written settlement offers related to Former Administrator Hammer and the Hammer Retaliation Law Suit were served up Attorney Naylor by Former Administrator Hammer's legal counsel, which Attorney Naylor never provided to either me or the Sun Valley City Council. Nor did Attorney Naylor ever request that a Sun Valley City Council meeting be held to discuss the settlement proposals provided to Attorney Naylor by Former Administrator Hammer.

The Unauthorized Ball Report

87) On or about December 4, 2012, the Idaho Mountain Express posted on its on-line version, a document purporting to be a report issued by Investigator Ball dated December 20, 2011 (the "Unauthorized Ball Report") (Exhibit G), which was purportedly prepared prior to the end of my administration as Mayor of Sun Valley on January 3, 2012.

88) I certify that prior to my viewing of the Unauthorized Ball Report on or about December 4, 2012, that I never was provided a copy of the Unauthorized Ball Report, including specifically that I was never provided a copy of the Unauthorized Ball Report prior to the end of my tenure as Mayor of Sun Valley on January 3, 2012.

89) I certify that the Authorized Ball Report significantly differs from the Unauthorized Ball Report in that the Authorized Ball Report asserted multiple facts and made multiple conclusions about the conduct of Former Administrator Hammer that differ from the facts and conclusions about the conduct of Former Administrator Hammer now found in the Unauthorized Ball Report.

90) I certify that the Authorized Ball Report I was provided on December 12, 2011 also significantly differs from the Unauthorized Ball Report in that the Authorized Ball Report included factual allegations and findings about misconduct of Council Member Ribí which are missing from the Unauthorized Ball Report.

91) I certify that I would have never approved the Unauthorized Ball Report or its publication, as in the Unauthorized Ball Report Investigator Ball has made numerous factually incorrect statements, based mostly on hearsay, as well as doubtful and dubious statements of individuals that had been interviewed by Investigator Ball. In addition, Investigator Ball had no authority pursuant to her retainer agreement (Exhibit B) to make any conclusions or findings of any sort, as Investigator Ball's role related to the Hammer Disciplinary Investigation was merely to interview individuals with knowledge of the allegations of misconduct against Former Administrator Hammer, to obtain any relevant documents, and to report on what those facts and documents were. I consider Investigator Ball's including of findings and conclusions in the Unauthorized Ball Report to be an unauthorized and illegal usurpation of my authority to have made "final and binding" decisions regarding Sun Valley employee disciplinary matters pursuant to Section 8.7 of the Sun Valley Personnel Policies And Procedures while I was still Mayor of Sun Valley.

92) I certify that between December 12, 2011 until my tenure as Mayor of Sun Valley ended on January 3, 2012, I gave Investigator Ball no authority to contact Attorney Naylor, to discuss the issues associated with the Hammer Disciplinary Investigation or to take any direction of any sort from Attorney Naylor.

93) I certify that between December 12, 2011 and the end of my tenure as Mayor Of Sun Valley on January 3, 2012, I gave Investigator Ball no authority or no direction to modify the Authorized Ball Report in any fashion or to prepare any additional or supplemental reports for Sun Valley related to the Hammer Disciplinary Investigation she had been retained to perform on behalf of Sun Valley, including in regards to the Unauthorized Ball Report.

94) I have reviewed the December of 2011 invoice of Investigator Ball (Exhibit C) which

indicates that in direct violation of my authority and without my knowledge or approval, between December 13, 2011 and December 20, 2011, Investigator Ball surreptitiously communicated with Attorney Naylor and apparently prepared the Unauthorized Ball Report at Attorney Naylor's direction without my authority, knowledge or direction, and dated the Unauthorized Ball Report on December 20, 2011 to fraudulently assert that it had been completed during my tenure with my knowledge as Mayor of Sun Valley, when it had not.

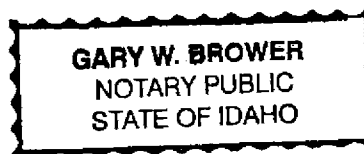
95) I certify, that the Authorized Ball Report did not include the language that appears on the Unauthorized Ball Report claiming that "This Document Is Protected By Attorney Work Product Privilege", as at no time was Investigator Ball retained by Sun Valley during my tenure as Mayor of Sun Valley to perform any legal work or to prepare her report in regards to pending litigation, as Investigator Ball was retained solely to perform the fact finding portion of an internal Sun Valley disciplinary investigation.

Further Affiant sayeth not.

Subscribed To And Sworn Before
Me This 19 Day Of September
2013.

Gary W. Brower
Notary Public

Wayne Willich
Wayne Willich



exp 09/27/2018

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☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

EXHIBIT A



CITY OF SUN VALLEY PERSONNEL POLICIES & PROCEDURES MANUAL

Adopted by the Mayor and City Council
Resolution No. 1997-2 January 16, 1997
Resolution No. 1997-9 January 16, 1997
Resolution No. 2001-03 May 16, 2001
Resolution No. 2004-08 November 18, 2004
Resolution No. 2007-06 February 15, 2007
Resolution No. 2007-12 March 15, 2007

3.2 ADMINISTRATION AUTHORITY

The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor. All other personnel, including the City Clerk and City Treasurer, shall be directly supervised and evaluated by the City Administrator.

8.7 INFORMAL REVIEW

A regular, full-time Employee shall have the right to an Informal Review regarding disciplinary actions consisting of suspension without pay, disciplinary probation, salary reduction, involuntary demotion, or dismissal from City employment within 5 working days after receiving notification of the proposed disciplinary action.

The following steps shall be followed in submitting and processing a request for an Informal Review. For purposes of this Informal Review process, the City Administrator shall be deemed to be the Department Head for all Employees. The Chief of Police shall be deemed to be the Department Head for the Police Department; the Fire Chief shall be deemed the Department Head for the Fire Department; and the Community Development Director shall be deemed the Department Head for the Community Development Department.

Step 1: In disciplinary actions imposed by the Department Head, the affected Employee may submit a request for an Informal Review of the disciplinary action to the City Administrator within five (5) working days after receiving notification of the proposed disciplinary action. The Department Head shall review the Employee's request for an Informal Review and provide to the City Administrator any and all relevant information regarding the proposed disciplinary action within three (3) days after notification of the Employee's request for an Informal Review.

Step 2: The City Administrator shall meet with the affected Employee and the Department Head to review the reasons for the proposed disciplinary action and any relevant information the Employee desires to submit in connection with the disciplinary action or the information and/or events upon which the proposed disciplinary action is based.

Step 3: Upon the conclusion of the Informal Review, the City Administrator shall prepare his decision in writing upholding, modifying, or rescinding the proposed disciplinary action.

Step 4: If the affected Employee is dissatisfied with the decision of the City Administrator, then the Employee may request that the City Administrator's decision be informally reviewed by the Mayor within five (5) working days after receiving the City Administrator's decision. The Mayor shall meet with the City Administrator and the Employee, review the Employee's written material and relevant information regarding the proposed disciplinary action and provide his written decision within three (3) days after the meeting. The decision of the Mayor shall be final and binding.

In the event of disciplinary action proposed by the City Administrator acting in the capacity of the Department Head, such proposed disciplinary action shall be reviewed directly by the Mayor consistent with Step 4, above. The decision of the Mayor shall be final and binding.

If the request for an Informal Review is not initiated within the time limits established by this Section, then the right for an Informal Review shall be deemed to be waived. Any disciplinary action not taken to the next step of the Informal Review procedure within the time limits established by this Section shall be considered settled on the basis of the last decision made.

The time limits prescribed in this Section for the initiation and completion of the steps of the Informal Review procedure may be extended for a reasonable amount of time by the reviewing City Employee.

EXHIBIT B

MANAGEMENT NORTHWEST

916 Wyndemere Drive -Boise, ID 83702

Ph: 208-342-7342 Fax: 208-975-7805

<http://www.mnwlegal.com/>

Patricia Latham Ball Esq.

plball@mnwlegal.com

November 23, 2011

Mayor Wayne Willich
City of Sun Valley

Re: Engagement Letter for City of Sun Valley Investigation

Sent via Email

Dear Mayor Willich,

By signing and dating below, this letter serves as your engagement of the undersigned to conduct a fact-finding investigation on behalf of the City of Sun Valley. No retainer will be required in this regard.

City of Sun Valley will be billed at an hourly rate of \$240 for all work conducted. Travel time from Boise to Sun Valley will be billed at 1/2 the hourly rate plus IRS-designated mileage. The City of Sun Valley will also be responsible for the reimbursement of all reasonable and necessary business expenses incurred during the course of the investigation, including but not limited to mileage, hotel, meals, parking fees and printing costs.

The control group for purposes of all communications relating to the investigation will include City Attorney Adam King, Mayor-Elect Dwayne Brisco and Mayor Willich.

It is also my understanding that you will arrange all witness interviews as requested by the undersigned. Interviews will be conducted on November 28, 2011 and November 29,

2011, at the law office of Hawley Troxell, located at 126 Main Street South, Suite B-4, Hailey, Idaho. A written report will be prepared after the interviews are conducted.

Please sign and date below and return to the undersigned via email or fax. My cell phone number is 208-2226.

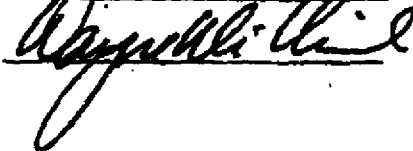
Sincerely,



Patricia Latham Ball, Esq.

Dated: 11/23/2011

Printed Name: WAYNE WILGICH

Signed: 

cc: Adam King, Dwayne Brisco

EXHIBIT C

Management Northwest - Patricia Latham Ball, Esq.
916 Wyndemere Drive
Bainbridge, GA 31702
tr@msnw.com

Invoice submitted to:
City of Sun Valley - Attention: Tammi Hall

January 04, 2012

Invoice #14589

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
11/17/2011	PLB Telephone conference with Adam King	0.30 240.00/hr	NO CHARGE
11/18/2011	PLB Telephone conference with Adam King and Mayor	0.40 240.00/hr	NO CHARGE
11/21/2011	PLB Telephonic interview and briefing with client; Telephone call from client	1.60 240.00/hr	NO CHARGE
11/22/2011	PLB Emails to and from client; Prepare and send tentative interview schedule	0.40 240.00/hr	96.00
11/23/2011	PLB Prepare engagement letter	0.30 240.00/hr	NO CHARGE
	PLB Telephone call from King	0.20 240.00/hr	48.00
	PLB Prepare email to Mayor regarding interview schedule; Review voicemails from Mayor; Prepare email regarding witness list; Review voicemail and letter from Hammer's counsel; Review file; Prepare email to client regarding parameters of investigation; Prepare Day two interview schedule; Telephone conference with attorney Miller regarding conference room usage; Review emails from King regarding documentation	1.90 240.00/hr	456.00
11/24/2011	PLB Review emails from client and Kirt Naylor	0.20 240.00/hr	48.00

		<u>Hrs/Rate</u>	<u>Amount</u>
11/25/2011	PLB Review and reply to emails by and between WW, KN and DB; Prepare email to client regarding scope of investigation	1.10 240.00/hr	264.00
11/26/2011	PLB Emails to and from client	0.20 240.00/hr	48.00
11/27/2011	PLB Review file; Prepare for interviews	1.50 240.00/hr	360.00
11/28/2011	PLB Travel from Boise to Hailey; Travel from Hailey to Sun Valley Lodge Billed at half time	3.20 120.00/hr	384.00
	PLB Confer with Mayor; Telephone conference with Naylor; Conduct Interviews; Confer with Hammer's attorney; Confer with Naylor; Prepare for day two interviews	7.40 240.00/hr	1,776.00
11/29/2011	PLB Travel to Hailey from Sun Valley; Return trip Half-time billed	0.80 120.00/hr	96.00
	PLB Prepare for Day Two Interviews; Review Day 1 notes; Conduct full day of interviews; Confer with client; Evening: Status call to Naylor; Review documents from witnesses; Review emails from client and witnesses; Calls to and from Naylor regarding Prior and interview schedule; Prepare for Day Three interviews	10.50 240.00/hr	2,520.00
11/30/2011	PLB Prepare for interviews; Conduct interviews; Telephone conference to and from Naylor; Emails from Hammer's attorney; Email from client	4.20 240.00/hr	1,008.00
	PLB Travel from Sun Valley to Boise Half time billed	2.80 120.00/hr	336.00
12/1/2011	PLB Emails to and from Hammer; Review additional documentation provided by Hammer; Emails to and from Mayor; Emails from King; Review documentation; Emails regarding expanded scope of investigation to include Fire Department complaints; Review emails to and from client	2.10 240.00/hr	504.00
12/2/2011	PLB Telephone conference with client; Prepare request for documents for expanded scope of investigation; Telephone conference with Naylor; Provide status updates to client; Emails from King regarding documents requested; Emails from Ribi regarding documentation	2.30 240.00/hr	552.00
12/3/2011	PLB Telephone conference with Naylor; Travel to and receive documents; Review file	1.20 240.00/hr	288.00
12/4/2011	PLB Review documents; Review emails	1.80 240.00/hr	432.00

		<u>Hrs/Rate</u>	<u>Amount</u>
12/5/2011	PLB Travel to and meet with Frostenson to conduct interview relating to Fire Department; Review City documents with Frostenson; Confer with Naylor; Review credit card documents with Frostenson	9.50 240.00/hr	2,280.00
	PLB Post-interviews: Conduct extensive review of time records, time cards, payroll reports, witness notes and other Fire Department time record documentation; Cross-check payroll to time reports; Cross-check time reports to handwritten time card totals	5.50 240.00/hr	1,320.00
12/6/2011	PLB Review file; Telephonic follow-up interview with Mal Prior; Telephonic interview of Ray Franco; Follow-up telephonic interview with Ek; Telephone call to Naylor	3.50 240.00/hr	840.00
	PLB Conduct extensive review of credit card invoices for City Administrator and Fire Chief; Emails to and from Hall, Hammer, Willich, Naylor, Ek, King	6.50 240.00/hr	1,560.00
12/7/2011	PLB Review emails from witness Ek; Review documents; Review witness notes; Commence preparation of investigative report; Review documents provided by Hall; Review all documents and commence selecting Exhibits for report; Cross-compare exhibits to report details; Summarize witness notes; Continue preparation of first draft report; Conduct telephonic interview of Adam King; Confer with Naylor; Emails to and from Naylor	8.20 240.00/hr	1,968.00
12/8/2011	PLB Numerous emails to and from Hall regarding document collection; Review documents; Continue preparation of investigative report; Review and prepare exhibits and exhibit lists; Numerous emails to and from Naylor; Emails to and from Hall; Research law; Review client policy manual; Review exhibits and exhibit list	13.50 240.00/hr	3,240.00
12/9/2011	PLB Review and revise report; Emails to and from Naylor; Telephone conference with Naylor	4.40 240.00/hr	1,056.00
12/11/2011	PLB Review and revise draft investigative report; Review exhibit list	3.20 240.00/hr	768.00
12/12/2011	PLB Final review of report; Finalize exhibits; Travel to and participate in telephonic meeting; Review recorded interview; Emails to and from client	5.20 240.00/hr	1,248.00
12/13/2011	PLB Review emails from Prior; Telephone conference with Naylor; Email to Prior; Revise report; Email to and from Mayor	0.60 240.00/hr	144.00
12/15/2011	PLB Review email from Prior; Telephone call to Naylor; Email to Prior	0.30 240.00/hr	72.00
12/16/2011	PLB Emails to and from Naylor	0.40 240.00/hr	96.00

	<u>Hrs/Rate</u>	<u>Amount</u>
12/17/2011 PLB Email from Naylor; Telephone conference with Naylor	0.40 240.00/hr	96.00
12/19/2011 PLB Review Hammer tape; Emails to and from Naylor regarding report	1.70 240.00/hr	408.00
12/20/2011 PLB Review Prior tape; Review and revise three investigative reports; Emails to and from Naylor; Finalize reports; Add exhibits	2.90 240.00/hr	696.00
1/3/2012 PLB Telephone call from Tammi; Return call to Kirt	0.20 240.00/hr	NO CHARGE
For professional services rendered	110.40	\$25,008.00
Additional Charges :		
11/28/2011 Sun Valley Lodging and Meals		395.43
Lunch - Shorty's		12.00
Mileage from Boise office to Hailey conference room then Sun Valley Lodge - 157.5 x \$.51		80.33
Breakfast		7.50
11/29/2011 Breakfast		7.88
Mileage from Hailey to Sun Valley and return trip - 27 x \$.51		13.77
Dinner - 18.89		18.89
11/30/2011 Mileage from Sun Valley to Boise - 157.5 x \$.51		80.33
Breakfast/Lunch - Shorty's		11.50
12/5/2011 Best Western Vista Inn at the Airport: Hotel Conference Room for Frostenson Interview; Hotel-provided Lunch for Meeting; Hotel photocopy charge		124.84
12/20/2011 Copying cost 412 at .08		32.96
Total costs		<u>\$785.43</u>
Total amount of this bill		<u>\$25,793.43</u>
Balance due		<u>\$25,793.43</u>

EXHIBIT D

of Sun Valley

Page 6

	<u>Amount</u>
12/2/2011 - [REDACTED]	851.00
12/5/2011 - [REDACTED]	184.00
- [REDACTED]	253.00
- [REDACTED]	138.00
12/6/2011 - [REDACTED]	138.00
- [REDACTED]	299.00
- [REDACTED]	184.00
12/7/2011 - [REDACTED]	391.00
12/9/2011 - Meeting with Mayor Willich and Councilman Briscoe to review Patti Ball draft report.	253.00
- Continued meeting with Mayor Willich and Councilman Briscoe re Patti Ball report.	299.00
- [REDACTED]	46.00
12/12/2011 - [REDACTED]	69.00
- [REDACTED]	69.00

of Sun Valley

Page 7

Amount

12/12/2011 -

Extended meeting with Mayor Willich Councilman Briscoe [REDACTED]
[REDACTED]

713.00

12/13/2011 -

Detailed review of final report from Patti Ball; [REDACTED]
[REDACTED]

345.00

115.00

69.00

115.00

12/14/2011 -

621.00

23.00

184.00

161.00

12/15/2011 -

69.00

92.00

46.00

For professional services rendered

\$6,601.00

Additional Charges :

11/30/2011 -

99.36

EXHIBIT E

I, Mayor Wayne Willich, do hereby authorize Kirtlan G. Naylor of the law firm Naylor & Hales, P.C. to notify the Blaine County Prosecuting Attorney with regard to the information and facts discovered in an employment investigation that may be the subject of criminal conduct.



Wayne Willich

12/16/2011
Dated

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Wayne Willich
DATE: December 16, 2011
RE: **NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE**
PENDING INVESTIGATION

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY CONTINUED ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, you are directed not to perform any of the duties of your employment other than those necessary to preserve the City's interests in your absence. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment, as set forth in the Notice of Administration served on you as well.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or

application (however characterized) or remove any documents or other City property (excluding only your personal effects unconnected with City operations) from any City facility.

You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences.

In the event the investigation indicates personnel action is warranted, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

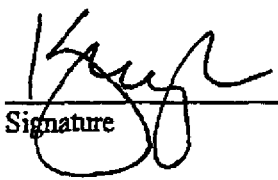
Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

DATED this 16th day of December 2011.


Wayne Willich
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this 16th day of December, 2011.


Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Wayne Willich, Mayor
DATE: December 16, 2011
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated this 16th Day of December, 2011.


Wayne Willich, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this 16th day of December, 2011.


Signature

EXHIBIT G

THIS DOCUMENT IS PROTECTED BY ATTORNEY WORK PRODUCT PRIVILEGE

City of Sun Valley - Investigative Report

December 20, 2011

Patricia Latham Ball, Esq.
pball@mnwlegal.com
www.mnwlegal.com
Ph: (208)342-7342 - Fax: (208)975-7005

HAMMER/CARNES
007
2012-002

1
BALL 1

INTRODUCTION

On November 21, 2011, the undersigned was retained by the City of Sun Valley ("the City") to perform an investigation concerning complaints raised relating to alleged violations of the City of Sun Valley Personnel Policies & Procedures Manual ("Manual") by City Administrator Sharon Hammer ("Hammer"). Specifically, the City requested that the undersigned conduct an investigation relating to a complaint lodged by the City Treasurer, Michelle Frostenson ("Frostenson") relating to Hammer's alleged misconduct. On December 2, 2011, the City requested that the scope of investigation be broadened to include a preliminary evaluation of potential violations of conduct within the City's Fire Department.

The potential violations by Hammer were reported by Frostenson to Mayor Willich on October 5, 2011, Ribl on November 10, 2011 and the City Council on November 11, 2011. Frostenson, Hammer and City Clerk Kelly Ek ("Ek") were placed on administrative leave pending an internal investigation.

INVESTIGATION PROTOCOL

The investigation consisted of:

A. Interviews of the Following Individuals:

1. Michelle Frostenson, City Treasurer
2. Sharon Hammer, City Administrator
3. Kelly Ek, City Clerk
4. Wayne Willich, Mayor
5. Dwayne Briscoe, Mayor-Elect
6. Nils Ribl, Councilman
7. Connie Morris, Police Officer
8. Mark Hoffman, Development
9. Cameron Daggett, Police Chief
10. Mal Prior, Firefighter
11. Adam King, City Attorney
12. Ray Franco, Assistant Fire Chief

Witnesses were interviewed at the law offices of Hawley Troxel in Hailey, Idaho or telephonically. Frostenson participated in a follow-up interview in Boise, Idaho. Witnesses were instructed that the investigation was confidential. They were also advised that retaliatory conduct would not be tolerated against witnesses participating in the investigation.

OVERVIEW OF FINDINGS

Sufficient evidence exists to support multiple violations of City policy by Hammer. Since the documentation and witness statements resulted in evidence that could also legally implicate Hammer, a follow-up interview was not conducted with Hammer. Additionally, preliminary interviews pertaining to City Fire Department concerns supported possible violation of City policy and law. Accordingly, no interviews were conducted with Chief Jeff Carnes, Tina Carnes or Nick Carnes. These matters should be immediately referred to an outside agency for further audit and investigation of possible civil and/or criminal violations.

ALLEGATIONS AND INVESTIGATOR'S FACTUAL FINDINGS

Sharon Hammer

Use of City Vehicle

Frostenson alleges that Hammer has violated the City's policy in her personal use of a City-owned vehicle, a 2001 Ford Expedition ("City Vehicle"). Section 3.13 of the Manual states in pertinent part:

"City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor."

In response to the existence of Manual Policy number 3.13, Hammer contends that the Mayor had authority to change the terms and conditions of her employment based upon paragraph 10 (A) of her Employment Agreement (Exhibit A), which was extended via an Agreement Extension (Exhibit B). The Employment Agreement, Paragraph 10 (A) states:

"The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement."

Hammer admits that she has openly used the City Vehicle for both personal and business purposes since commencing her employment in June of 2008. In a signed written statement entitled "Use of City Vehicle" dated November 28, 2011 and provided to the investigator (attached as Exhibit C), Hammer states that when she first moved to Sun Valley in June of 2008, she did not have a vehicle. Hammer asserts as follows:

"Mayor Willich authorized me to use the Ford Expedition whenever I needed it, even for personal use. Because of the proximity to City Hall, I left the Ford Expedition at City Hall every night and walked to and from work every day."

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Based on the approval of Mayor Willich, I used the Ford Expedition for personal use."

Hammer further writes:

"In October of 2008, I and my husband moved...approximately 1.7 miles from City Hall and the City Hall Fire Station. At that time, I had a discussion with Mayor Willich regarding continued use of the Ford Expedition. Mayor Willich specifically told me that I could continue to use the Ford Expedition at all times, including for commuting to City Hall and for personal use. We discussed that I had become a member of the Sun Valley Fire Department and the need for my availability to respond to Fire Department pages....." (Exhibit C)

Hammer admits that she maintained possession of the City Vehicle and has operated it "for personal use such as going to the gym and to the grocery store." She has also used this vehicle when responding to pages "from the gym, the grocery store, the movie theater and the golf course" as well as "social events." She contends that Mayor Willich and City Council members have viewed her operating the City Vehicle "in the evenings, weekends and holidays."

"Not once in over three years did any member of the City Council question me about the use of the Ford Expedition even though my use of the Ford Expedition was conspicuous. At all times, my use of the Ford Expedition was done with the explicit approval and the authority of Mayor Willich." (Exhibit C)

Hammer admits that she had been questioned by Frostenson regarding her personal use of the City Vehicle. Frostenson states that she raised the issue several times as a violation of policy, and that Hammer only responded, "I know." Frostenson states that most recently she complained to Hammer on September 19, 2011 and September 22, 2011, when Hammer had the vehicle in Boise while on personal time. Hammer claims that she advised Frostenson that there was an agreement allowing her personal use.

Mayor Willich states that he does not specifically remember authorizing Hammer's personal use of the City Vehicle, but he "might have said that." Mayor Willich expressed that he had no real objection to its use for personal and business. Neither Hammer nor Mayor Willich presented the investigator with any written email, amendment or memorandum authorizing Hammer's personal use of the City Vehicle. Witnesses interviewed agreed that they had viewed Hammer openly driving the City Vehicle for business and personal use. Mayor-Elect Dwayne Briscoe stated that he was unaware that a City policy existed prohibiting personal use.

Both Mayor Willich and Hammer referenced the age and lack of value of the City Vehicle to support a finding that there was no violation. Hammer wrote that the City Vehicle "has been fully depreciated in Sun Valley's financial records and is currently only worth approximately \$3,500 in Blue Book trade-in value." (Exhibit C). Mayor Willich

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expressed that it was a surplus vehicle that he "should have just sold to" to Hammer "for \$300."

Findings:

Sufficient evidence exists to support a violation of Policy 3.13 of the City's Manual.

Whether the Mayor authorized Hammer to bypass Policy 3.13 is unclear from the facts. While the Mayor claims that he may have granted her authority, there is no documentary evidence supporting this authorization. Furthermore, even if the Mayor had authorized a departure from Policy 3.13, it does not appear that he had authority to do so under Hammer's contract or the Manual.

While Paragraph 10 (A) of Hammer's Employment Agreement permits the Mayor to "fix such other terms and conditions of employment as he may determine from time to time to be appropriate," the Mayor is only authorized to do so as it relates to "performance of Employee" and only to the extent that such other terms are "not inconsistent with or in conflict with the provisions of this Agreement." This Agreement incorporates the Personnel Manual into the Agreement in that it specifically states in Paragraph 10 (b) that "all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer." (Exhibit A, emphasis added). "Benefits" would include use of the City Vehicle. It further states in Paragraph 12 A that "the text herein shall constitute the entire agreement between the parties." Additionally, the Manual specifically states that "in order to maintain efficient and effective city services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered."

Additionally, Hammer's Employment Agreement commenced on June 1, 2008 with no fixed term. It was amended on September 17, 2009 to state that it "shall automatically renew on its anniversary date (June 1st) for a period of one (1) year hereinafter unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date." According to the Agreement Extension, the Employment Agreement between the City and Hammer renewed automatically on June 1, 2010 and expired under its own terms on June 1, 2011. Any contractual authority interpreted to be granted her for personal use of a City Vehicle at inception of employment would arguably have expired on June 1, 2011.

Accordingly, there appears to be no authority either in the Manual or contractually for the Mayor to circumvent Policy 3.13. Whether the City considers the openly accepted personal use of the City Vehicle by the Mayor and Councilman as a mitigating factor is not within the scope of this investigation.

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Use of City Credit Card for Personal Fuel Charges

City Treasurer Frostenson raised concerns to City Council and the Mayor that Hammer's fuel purchases for FY (fiscal year) 2010 (October 2010 through October 2011) on her City-issued credit card appeared excessive at approximately \$1700. She expressed concern that Hammer was using the City-issued credit card to purchase fuel for personal use. A preliminary audit of these fuel charges by the investigator confirms that this estimate is accurate if not higher. A few credit card statements could not be located, and a few receipts were missing, all of which could drive the number higher.

Since Hammer openly used a City-owned vehicle for personal and business use, a mileage log would be the controlling document to determine whether City funds were appropriately used. Hammer neither maintains a log nor other documentation tracking the number of miles driven each year for business versus personal. Her omission now makes it impossible to ascertain the exact amount of fuel consumed for each purpose.

Hammer states that she used both her City-issued credit card and a personal Capital One or MasterCard credit card to fuel the City Vehicle. She denies ever using the City credit card to purchase fuel for any vehicle other than the City Vehicle. She produced a summary of what she contends were personal gas purchases for the City Vehicle (Exhibit C). The documentation does not reference a license plate number, so there is no ability to confirm that the purchases were for her City Vehicle rather than her husband's or another vehicle. Hammer contends that her husband fills his vehicle with his own credit card.

Hammer's documentation shows that her personal credit card charges for fuel in 2009 totaled \$550.49, \$287.42 in 2010 and \$574.76 for 2011 to date. In addition to those charges, she sought reimbursement from the City for business fuel charges incurred on her personal credit card in the following amounts: 2009 - \$170.36; 2010 - \$243.90; 2011 - none) (Exhibit C).

Hammer provided the investigator with a signed statement dated November 28, 2011, entitled "Use of City Vehicle" (Exhibit C) and a follow-up letter dated December 1, 2011 (Exhibit D, page 3, paragraphs 2 and 3). Hammer indicated that she reviewed the City-issued credit card statement each month and verified that all supporting documentation was present to support the expenses; she then initialed the yellow cover sheet. The cover sheet and supporting documentation were then forwarded to Mayor Willich to review, approve and sign. Thereafter, Hammer reported that the packet was forwarded to a Sun Valley City Council member, on a rotating basis, for approval and signature.(Exhibit C) Hammer asserts that the Mayor, Frostenson or the City Council could have questioned the appropriateness of the payments at any time, but did not do so.

Findings:

Sufficient evidence exists to support a finding that Hammer violated the City's credit card policy by using the City credit card for fuel purchases that were for personal use.

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The City maintains a written credit card policy and requires City card users to sign a Credit Card User Agreement. The City cannot locate a signed agreement for Hammer. Since per the policy the City Administrator is responsible for handling misuse complaints, it is reasonable to conclude that she is aware of her obligations when using a City card. The policy states that "City credit cards may not be used for personal purchases or personal use."

Hammer's calendar year 2010 personal credit card charges are the most compelling evidence of Hammer's misuse of the City card. Hammer admits that the City Vehicle is the only vehicle she drives. She also admits that she used the City Vehicle in 2010 for personal and business purposes, including but not limited to commuting to and from work, grocery shopping, golfing and attending other social events. Witnesses also observed her using the City Vehicle to attend football games and to go camping on her free time. Despite these admissions, Hammer's personal fuel purchases showed absolutely no 2010 personal fuel purchases for the City Vehicle for the first four and one-half months of 2010. Her first use of a personal credit card in 2010 was May 16, 2010. In the meantime, the City's detail ledger shows at least four gasoline purchases during this same time period on the City's business credit card.

Additionally, for FY 2010 (October 2010 through October 2011), no personal fuel purchases were made for the following months: October, January, March, May and July. (Exhibit C).

Other concerns include repeated references on the submitted fuel expense to "Admin CC charges" rather than designating that the fuel was for a specific business trip (Exhibit E). One reference on the supporting documentation submitted by Hammer states "I can't tell if this is the city cc or my personal cc." (Exhibit E, page 2). This was fuel purchased on Hammer's City credit card that was reimbursed to her (Exhibit E).

Multiple purchases in close time and proximity were also noted. Hammer states that the only vehicle she fueled with the City card was her City Vehicle. On Exhibit F, Hammer's City credit card reflects three fuel purchases on the City card as follows:

4/5/11 - 7:19 in Hailey (19.536 gallons)
4/6/11 - 9:51 in Hailey (10.583 gallons)
4/6/11 16:22 in Mountain Home (11.718 gallons)

No other business travel expenses for that date (e.g., hotels, food purchases out of town) are noted on her City credit card statement. The gas receipts are not Fire or EMT related, because the handwritten notation on the receipts states "Administration - credit card charges - Boise." However, personal purchases that are lined out on her personal Capital One card reflect the following personal transactions on those same dates (Exhibit C):

4/5/11 - Twin Falls (Costco and Target)
4/6/11 - Boise (Boise Co-Op)

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Based upon the above entries, Hammer's City Vehicle appears to have been fueled on the morning of April 5, 2011 in Hailey. Hammer made purchases at Costco and Target in Twin Falls on her personal credit card. The vehicle was then re-fueled in Hailey on the morning of April 6, 2011. Hammer made a personal purchase at the Boise Co-Op on that same date and then refueled in Mountain Home in the afternoon. Based upon these entries, it appears that the description for 4/5/11 and 4/6/11 supporting three fuel purchases in two days for "Boise Administration" is not accurate.

As stated in the Manual's Mission Statement, the City "relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens..." Hammer's use of the City credit card for personal fuel consumption and her failure to track personal and business use of fuel was in complete disregard of her responsibilities as a public servant. It is recommended that an external investigation and/or audit be conducted to ascertain the degree of misuse of the City card and to determine whether any violations of law have occurred.

Time Off Reporting

Frostenson asserts that Hammer has not been properly reporting vacation and sick time off thus resulting in her being wrongfully reimbursed for time off and maintaining benefit accruals to which she is not otherwise entitled.

Sick Time:

Finding: Insufficient evidence exists to support a finding that Hammer failed to report sick time off.

Hammer indicated that even while ill at home she would continue working. It also does not appear that Hammer took any extended days off for sick leave purposes other than from January 6-11. The Mayor did not object to Hammer occasionally working from home. Accordingly, insufficient evidence exists to support a finding that Hammer's use and reporting of sick leave clearly violated the City's policy. However, the time off taken from January 6-11, 2011, should be deducted from her sick leave bank.

Vacation Reporting

Frostenson asserts that Hammer has not been properly reporting vacation time off thus resulting in her being reimbursed for vacation and maintaining vacation accruals to which she is not otherwise entitled. Frostenson provides the documents set forth in Exhibit G to support Hammer's failure to accurately report time off. Frostenson states that other than emails, Hammer never formally reported vacation or sick time off on any timecard, as did other department heads. The investigator has not been able to find documentation that Hammer actually formally reported and tracked her vacation on any City time record. Hammer has not produced any such documentation.

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Exhibit G, as provided by Frostenson, shows the following vacation hours reported via Hammer sending emails to Frostenson:

2008 - 40

2009 - 0

2010 - 80 (plus cashed out an additional 40 hours) = 120

2011 - 184 hours (plus cashed out an additional 40 hours) = 224

Hammer produced to the investigator a typed statement signed and dated November 28, 2011, which is entitled "Vacation, Sick and Flex Time." (Exhibit H) Hammer's position is that pursuant to Section 7(c) of her Employment Agreement, she was granted 40 hours paid vacation credited to her account at the start of employment and 160 hours per year thereafter. This issue is not disputed. As argued in her response to the Use of Vehicle discussion, Hammer asserts that the Mayor altered the terms of her vacation and sick plan pursuant to Section 10A of her Employment Agreement. Specifically, Hammer contends:

"Mayor Willich authorized me to utilize flex time to make up for work performed outside the normal 8:00 a.m. to 5:00 p.m. standard Sun Valley employee office or work hours (including a one hour lunch break) as is described in Section 3.9 of the Sun Valley Policies and Procedures." (Exhibit H)

Hammer then sets forth a detailed tracking of all hours spent working weekends, through her lunch periods (citing Policy 3.9 to support her lunch break entitlement), holidays and after the standard close of business. Hammer claims that by virtue of this approved "flex time" program, she has accrued approximately 140 days of flex time, "which was never officially accrued as part of my vacation time pursuant to my agreement with Mayor Willich." (Exhibit H). She continued, "nonetheless, the time was authorized pursuant to Section 10A" of her Employment Agreement (Exhibits A and B). Hammer "asserts that I only used approximately 19 of those 140 days I accrued during the 2008 through 2011 period. As of November 2011, I estimate that I still possess approximately 121 days of accrued flex time vacation pursuant to my agreement with Mayor Willich." (Exhibit H)

Hammer also stated that some of the time taken was authorized by the Mayor. For example, authorized time off included studying for the bar exam (64 hours in 2009) and EMT-related training such as studying for the EMT test, participating in ropes training and responding to Fire or EMT calls during the day. After setting forth her alleged accruals, Hammer sent a follow-up email to the investigator indicating that she had made an error in her calculations because she "neglected to factor in that she had been paid out for 40 hours of vacation" for 2010 and 2011. (Exhibit I)

The Mayor states that time off for bar exam preparation and Fire/EMT-related matters during the day was appropriate paid time since it inured to the benefit of the City. The Mayor had no objection to Hammer receiving continued pay during these absences without it being deducted from her vacation accruals. The Mayor confirmed that Hammer is a high performer who works long hours. With regard to a flexible schedule, the Mayor states that if an employee such as Hammer works late, he allows her to come in late the

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next day. The Mayor also had no objection to Hammer working from home on occasion, as when she is ill. However, the Mayor states that at no time did he approve any program deemed "flex time" or comp time for Hammer. When advised what Hammer was contending pertaining to "flex time" being tracked and used instead of vacation, the Mayor responded that he was "totally unaware of that" and did not authorize it.

Finding: Sufficient evidence exists to support a finding that Hammer failed to properly report vacation time taken. Her conduct is in violation of timekeeping requirements and is tantamount to falsification of timecards (Policy 8.4 (17)). Failure to report vacation taken resulted in Hammer receiving cashed out vacation payments to which she was not entitled. An independent outside audit and investigation should be immediately conducted to determine the extent of the falsification.

Hammer's accrual rates were set initially in her Employment Agreement at 40 hours up front vacation and 160 hours annually thereafter. Hammer's argument pertaining to contractual modification of the terms of her vacation benefit is rejected for the same reason discussed under "Use of Vehicle" set forth previously in this report. Additionally, Hammer's Employment Agreement specifically states that "vacation accrual and use shall follow the procedures set forth in the Personnel Manual." (Exhibit A) As with other City workers, Hammer is responsible for adhering to the Policies set forth in the Manual.

Employees are granted a salary and benefits, which encompasses their compensation packages. They are not authorized to make their own rules. Hammer, as the City Administrator is responsible for enforcing the City Manual. She is fully aware that she is an exempt salaried employee, as indicated in Policy 4.5. She is paid for the job without regard to the number of hours worked. Policy 4.8 (B) clearly states that "exempt employees will work more than 2080 hours per year" and that they may "have variations in the hours worked from week to week to do so." Hammer should also be aware that under Idaho law and the manual, she is not entitled to a lunch break. More importantly, Ms. Hammer is neither entitled to overtime for all hours worked over forty per week (Policy 4.8 (B)), nor is she entitled to even eligible for a compensatory or "flex" time off program as described by Hammer. (Policy 4.8).

Hammer's attempt to claim some sort of compensatory time off (referred by her as "flex time") either reveals a complete lack of understanding of wage and hour laws or an abuse of her power as City Administrator. Based upon the evidence presented, it appears to clearly fall under the latter. Additionally, regardless of her claim that she is entitled to a flex time program, Mayor Willich denies entering into such an agreement with Hammer or granting her such authorization. Even if he had, arguably he would not have had legal authority to grant such a program as applied to Hammer.

In considering whether a violation occurred, the investigator disregarded time off taken by Hammer to engage in bar examination studies, EMT training and testing, as these were approved by the Mayor and inured to the benefit of the City. Turning to other time off taken, Hammer has made it difficult to account for her time off due to her failure to

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complete timecards tracking vacation time off taken. Other department heads do so, and it appears highly suspicious that Hammer did not. Hammer provided the investigator with an after-the-fact recap of her vacation time used, which further demonstrates that she blatantly failed to track and/or accurately report vacation time as it was used each year (Exhibit D).

Based upon documentation presented by Frostenson (via emails received from Hammer referencing time off as compared to payroll documents) as well as Hammer's written statements, sufficient evidence exists to support a finding that, at a minimum, the following time off was taken as vacation and not reported:

- 2008: Hammer earned 40 hours of vacation time and properly reported 40 hours of vacation time. This left a zero balance going into 2009.
- 2009: Hammer earned 160 hours of vacation time for calendar year 2009. Frostenson's records support a finding that Hammer did not report any used vacation for 2009. Records provided by Frostenson indicate that with the most conservative interpretation of this data, at least 96 hours were taken by Hammer as unreported vacation in 2009, as evidenced in Exhibit G. These include 4/17/09, 5/15/09-5/22/09, 6/8/09 and 9/28/09-10/01/09. Additionally, Hammer expressly admits in her written supplemental statement that time off she took from 5/14-5/18 was for "mother-in-law funeral" and further admits not counting this time against her vacation bank (Exhibit D). The City's Manual does not include a paid bereavement leave benefit for this purpose. Family Medical Leave does not cover this type of absence either. Therefore, this time should have been reported as vacation. Additionally, Hammer admits to taking an additional 48 hours (1/25-1/26, 4/30-5/3 and 11/19/22) for vacation in 2009 for which there appears to be no reporting of vacation time used (Exhibit D). In sum, there appears to have been at least 144 hours of vacation taken in 2009 by Hammer without any hours being deducted from her vacation bank. This would leave Hammer with two days of unused vacation time in her bank going into 2010.
- 2010 - Hammer earned 160 hours for 2010, plus carried over 16 hours from 2009 (using conservative vacation reporting numbers to give Hammer the benefit of the doubt). Frostenson's documentation shows that Hammer informally reported, via email to Frostenson, 80 hours of vacation in 2010, which were deducted from Hammer's vacation accruals (Exhibit G). Hammer admits in Exhibit D that she actually took 160 hours of vacation in 2010. Rather than reporting those extra hours, Hammer cashed out 40 hours of "unused" vacation on November 21, 2010. She had no authority to cash out this amount, because she had not reported any time off in 2009. Policy 5.2 C(3) provides for cash outs only if the employee has used an equal amount of vacation leave in the previous 12 month period. Hammer had not reported any used vacation in 2009. Furthermore, and more importantly, Hammer was not authorized to receive a 40 hours cash out of vacation on November 21, 2010, because she did not have that much actual vacation to cash out. The maximum cash out taking all of Hammer's numbers as true would have been 16 (the two carried over days from 2009). The result was that Hammer

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received a cash out for 24 hours of compensation of which she was not entitled.

- 2011 - Hammer earned 160 hours of vacation at the start of 2011. Frostenson's documentation supports that only 184 hours were claimed as vacation through payroll (Exhibit G). Hammer admits actually taking 248 hours of vacation to date in 2011 (Exhibit D, 31 days x 8 hrs/day). Additionally, Hammer received a cash out payment for 40 hours of alleged unused vacation on April 24, 2011. This brings the total to 288 hours of vacation either cashed out or taken as paid time off for 2011. For the calendar year 2011 to date, reports indicate that Hammer has received compensation for at least 128 hours of unearned vacation benefits, through either cashed out vacation or continued pay.

Sabbatical:

Hammer contends that her May 2011 vacation should have been credited to her earned Sabbatical time off. Hammer claims that on or about May 10, 2011, she "informed Frostenson that she was going to take an extended vacation of 23 days, including using 15 days of sabbatical vacation" which Frostenson did not record. (Exhibit H) Frostenson denies that Hammer ever advised her that she should apply sabbatical time to the May 2011 vacation. The email documentation supports Frostenson's position that the time off request was for vacation rather than a sabbatical. Additionally, Frostenson states that even if Hammer had requested that the time off be recorded as Sabbatical leave, Hammer was not yet eligible for her sabbatical time while she was on the May vacation, because she had not reached her three-year anniversary. Frostenson further indicates that sabbatical time off has never been placed into vacation accruals in the system. Sabbatical is tracked separately and only on employee request. When utilized, it must be taken in one lump sum and is paid out as straight salary and not coded as vacation.

Policy 5.3 states that sabbaticals are earned after completion of the first three years of employment. Hammer places her own actual employment start date as June 23, 2008 (Exhibit I, handwritten note under "Sabbatical"). The vacation in question ran from May 9, 2011 to June 9, 2011. Therefore, she was not eligible for a sabbatical leave for this time off. Second, Policy 5.3 requires the employee to schedule the sabbatical dates "in consultation and with the approval of the Supervisor" which would be the Mayor in Hammer's case. Therefore, any notification or email to Frostenson would have no impact unless authorized by the Mayor. Finally, sabbaticals must be taken as a single block of 15 days, which has not occurred since Hammer became eligible for this benefit. Hammer is eligible for a 15-day Sabbatical, which must be taken within one year from being earned. However, this is a separate issue from vacation time off and is not treated like vacation from a cash out or reporting standpoint.

In sum, clear violations of the Manual occurred due to false reporting and failure to accurately report vacation usage. Vacation time off must be accurately reported by City employees in order to ensure that there is no financial impropriety or abuse of public

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funds. At a minimum, Hammer violated City policy; legal implications should be pursued through audit and outside agency investigation.

Taped Recorded Conversation with Officer Morris Regarding Executive Session

On November 11, 2011, the City Council engaged in an Executive Session to discuss Frostenson's concerns relating to Hammer. Hammer admits that she was aware that this was an Executive Session. Executive Sessions are confidential and not open to the public.

Hammer provided a signed statement to the investigator dated November 28, 2011, which is entitled "November 10-11, 2011" and attached as Exhibit J. This statement confirms that Hammer was aware that the City Council intended to hold an Executive Session on November 11, 2011, for the purpose of "hiring, firing and disciplining an employee." (Exhibit J) Although the Executive Session was scheduled for 2 p.m. on a holiday closure, Hammer states that she was working in the office at that time. Hammer admits meeting Officer Connie Morris "around the Police chief's office door" and hearing Mayor Willich and Councilman Nils Ribi ("Ribi") talking. Hammer states that a garbage truck pulled up outside after 45 seconds and then she left this area of the building. At this point she believed the meeting was about her since Frostenson was in attendance.

Hammer and Morris both state that they went on a ride in the police car, because Hammer was upset. When they returned to her office, Hammer states that she obtained tea three times in a location outside the Council Chamber front door. Hammer admits hearing some substantive conversation from the meeting. She admits that she "stood by the door for approximately 30 seconds to 1 minute brewing tea" and returned to get hot water "two more times" standing there "for no more than one minute each time." Each time she admits hearing voices in the Chamber, but states she "could not make out much of what was being discussed." (Exhibit J).

Morris claims she overheard some portions of the Executive Session by virtue of working at and around her work station. Morris states that she was under the impression that Council meetings are open to the public and thus not confidential. Both Morris and Hammer deny any intentional eavesdropping.

With regard to the recorded voicemail submitted to the City by City Clerk, Kelly Ek ("Ek"), both Hammer and Morris verify that they are the parties to the conversations. Both deny any wrongdoing by virtue of the conversation. The voicemail is in the possession of the investigator and the City.

City Police Chief Cameron Daggett, 1986 to present, has listened to the Recording and believes there was no wrongdoing evidenced on the Recording.

Finding:

Insufficient evidence exists to support a finding that Morris or Hammer improperly eavesdropped on the Council's Executive Session. It appears that they heard the

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discussions from areas of the building open to the public. Conversations lose the protection of confidentiality when the speaker has the discussion in a place where others have the right to be and talks loudly enough for the conversation to be overheard. This appears to have happened here. The Council, although in an Executive Session i.e., closed to the public, discussed the matter loudly enough to be heard outside the room. Morris and Hamner lingered in areas where they had the right to be at the time.

Although not a technical breach, it is clear that Hammer violated the spirit of the concept of the Executive Session by lingering in the hall to listen and in having Morris relay the information she heard from the closed session. Additionally, sufficient evidence exists to support a finding that Hammer abused her position of authority by riding in a police car with Officer Morris to discuss the Executive Session contents and later questioning this subordinate staff member to extract the confidential content of an Executive Session. This line of inquiry, which was evidenced in the recording provided by Ek, is inconsistent with the "moral sense of stewardship" set forth in the City's Mission Statement. The conduct was clearly unbecoming of a City Administrator and was thus improper.

Unauthorized Bonus Granted to Ray Franco

Ray Franco ("Franco") Assistant Fire Chief for the last three years, was granted the following bonuses and/or raises:

03/06/09 - FY 09 pay adjustment of step increase from 7 to 8 (3.78%); bonus of \$750.00
10/01/09 - FY 10 pay adjustment of 2.1%
10/01/10- FY 10 2% COLA (cost of living adjustment); additional bonus of \$2,000 (Exhibit K)

The 2009 increases were authorized by signatures of the Mayor, City Administrator and Finance Director. The October, 1, 2010, COLA is covered in two documents. The first states in handwriting "FY 11" and is authorized by the Mayor and City Administrator only. The second lists the 2% COLA plus the \$2,000 bonus, authorized by the Mayor and City Administrator. (Exhibit K)

Franco states that Hammer informed him that she was providing him with the \$2,000 bonus and instructed him not to tell anyone about its issuance. In his interpretation, this included Fire Chief Jeff Carnes. Carnes and Franco never discussed the bonus. With regard to the 2009 bonus, Franco states that Hammer did not give him the same instruction regarding non-disclosure. Franco states that 2009 bonuses were given to "everyone." Since this issue arose after Hammer's initial interview, she has not yet been re-interviewed on this point.

Finding:

Insufficient evidence exists to support a finding that the bonus payout was in violation of City policy.

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The Mayor signed off on the bonus issuance, and the bonus payout was properly documented in the file. Employers should not instruct employees not to disclose wages as this is protected concerted activity. However, no adverse action was threatened against Franco if he opted to disclose the bonus. The City Administrator appeared within her authority to issue the bonus, as long as it was approved by the Mayor. No policies were provided by the City to contradict this authority.

Another issue raised by Frostenson was whether Hammer inappropriately altered documentation submitted concerning Franco's work on BLM fires. Based upon witness statements, there appears to be great confusion on the billing and tracking process for BLM work. There was also scant documentation provided to provide guidance on this issue. Accordingly, insufficient evidence was presented to make a determination on this issue.

Conflict of Interest with Eric Adams

Concerns were raised whether Hammer was engaged in a relationship with City Building Inspector Eric Adams ("Adams") resulting in Adams being provided preferential treatment in compensation and obtaining workforce housing. No evidence was provided by any witness to support a finding that a romantic relationship existed at any time between Hammer and Adams. Evidence was provided to support a social friendship between Adams and Hammer. Witnesses referenced that Adam and Hammer were friends whom socialized outside the office. One witness showed the investigator photographs which depicted persons identified to be Adams and Hammer fishing together.

Adam's personnel file reflects that on June 6, 2011, Hammer and the Mayor approved a \$5,000 adjustment to "make his salary more comparable with other Department heads and reflect quality of work by employee." (Exhibit L) On October 1, 2011, Hammer and the Mayor authorized a 2% cost of living adjustment. On that Personnel Action Form, it was noted "\$5,000 salary adjustment in June 2011)." While it appears that there is no new salary adjustment being granted in October of 2011, Adam's compensation was adjusted upward by another \$5,000 increment.

As to workforce housing, Mal Prior claims that Adams has received preferential treatment in obtaining City-owned housing. The City bought two condominiums and then granted Adams one slot even though he already owns property. He also claims that the City lowered the rent on Adam's City housing.

Finding:

Evidence existed to support a finding that the October 2011 bonus may have been made in error. If not, the Personnel Action Form supporting the bonus should be clarified to approve this bonus payout.

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Insufficient evidence exists to support a finding that a romantic relationship existed between Adam and Hammer that created a conflict of interest. Of note, however, is the fact that Hammer exposed herself to allegations of preferential treatment by engaging in social relationships with a person over whom she controlled compensation and other personnel decisions. While it is acknowledged that the City is a small town and the social circle may not be large, it is imperative for a City Administrator to strictly comply with Policy 7.3, which expressly prohibits City employees from engaging in any activities which could represent a conflict of interest with their City employment.

Workforce housing guidelines were not adequately outlined or provided so that the investigator could have a basis upon which to evaluate this issue. It is recommended that the City establish strict policies for eligibility requirements for determining placement into City-owned housing to avoid any appearance of favoritism or impropriety.

Preliminary Investigation of Fire Department

While conducting the investigation on the above-referenced issues, Councilman Ribi received the text message attached as Exhibit M from Mal Prior ("Prior"), Captain of the City's Fire Department ("Department"). Ribi immediately sent the text message to the investigator. Prior was contacted and reluctantly agreed to meet for an interview on November 30, 2011. A follow-up telephonic interview was conducted on December 6, 2011 with Prior. Additionally, a telephonic interview was conducted with Assistant Fire Chief, Ray Franco ("Franco"), on December 6, 2011 immediately after he returned from vacation. Issues raised:

Issue #1 - Falsification of Fire Department Time Cards - Nick Carnes' Timecards

Mal Prior Interview: Prior has been with the Department for 15 years, and has served as Captain for the last 4-5 years. Prior asserts that there is falsification of Nick Carnes' time cards taking place within the Department. Prior states that he has witnessed Tina Carnes falsify timecards within the Department for her son, Nick Carnes. He is aware on one occasion where up to 79 hours of time not worked was put into Nick's time report by Tina

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Carnes. He cites Eric Adams, Ray Franco and Reed Black as other witnesses. Prior states that Nick Carnes does not always fill out a time card. Tina Carnes fills out Nick Carnes timecard "a lot" as witnessed by Prior. Prior asserts that time reflected on Nick Carnes' timecard is not actual time worked. He notes that Nick Carnes works full-time at Kelly Automotive as further evidence that the hours reported cannot be actual (Note: He also recommends reviewing all Kelly Automotive accounts as there may be charges to the City from Kelly Automotive for services such as oil changes that did not actually take place).

Prior states that he prepares the Fire and EMS report. He sees payroll files and what is submitted. The records submitted are not an accurate account of time actually worked. He cites that he has known about the misconduct for two years, but did not report it to the Fire Chief, Jeff Carnes ("Chief"), because he would lose his job.

Prior states that he reported his concerns to Hammer "a couple of times." He specifically met with her to discuss his concerns in the Summer of 2011 at Perry's. Prior indicated that he reported to Hammer that Nick Carnes' timecards were being falsified within the Fire Department. No changes were observed to address these issues. In Prior's opinion, Hammer "listened and didn't do anything." He states, "She was supposed to do something about it." There was no investigation to his knowledge, and the conduct continued. Hammer did not tell him she would look into it, and she never got back to him regarding these concerns. He also advised Hammer that there was "a lot of shady stuff that goes on" at the Department and referenced misuse of city credit cards and the volunteer firefighter funds. The only change was that she took over as treasurer of the volunteer funds. Prior states that everyone is intimidated by the Chief. He has been there for 38 years, and the Chief is "very good" with the city council and mayor." Prior states that recently the Chief made a general statement to him that this is not the first time someone has "gone after" him, and the Chief referenced Jeff Nivens. Prior stated, "we all know what is going on, and we don't want to be part of it." He also stated, "We all went to Sharon Hammer and told her."

Ray Franco Interview: Franco has been the Assistant Fire Chief for three years. Prior to this position he served as the Department's Captain for twenty years. Several years ago Franco was responsible for processing timecards. Nick Carnes was and still is consistently reporting more time on his timecards than he actually worked. In November or December of 2008, Franco was preparing timecards for payroll submission when he saw that Nick Carnes had reported 240 hours for one month. Franco states that Nick Carnes did not work those hours. Franco states that no one puts in more hours than Franco and he works 160 hours per month. Franco refused to approve it; the Chief approved the time.

Franco states that there were "quite a few times" that he refused to sign timecards do to falsified timecards from Nick Carnes. He does not believe other workers are falsifying timecards. In approximately January 2009, Franco was advised that Tina Carnes would be taking over the timecard processing. Basically, he feels that the responsibility was taken away from him. Franco believes that it is a conflict of interest for Tina Carnes to be preparing timecards for her son and then having her husband approve them.

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Franco states that Nick Carnes and Tina Carnes are consistently reporting more time than is actually being worked by Nick Carnes. He notes that Nick Carnes has a full-time job at Ketchum. Franco also states that Tina Carnes fills out Nick's timecards.

Franco states that there is a fear of people losing their jobs if they say anything. Franco indicated that he is "terrified" about losing his job. Franco once told the Chief that if the City Council asks him to bring this to his attention he would have to tell the truth. Franco believes that the Chief does not care. Franco states that the Chief knows that the timecards are being falsified by Tina, and he signs off on them. Franco does not understand why the timecards and records for the Department have not been audited. He states that even if a review goes back a year, it will find hours reported when the employee was not even there (at the City job).

Franco took some concerns to the City Administrator Hammer a few times in 2010 "hoping someone would catch it and look at it." One concern he raised to Hammer was that Nick Carnes was granted use of the Chief's City credit card. Nothing triggered an investigation or audit from Hammer to his knowledge.

Michelle Frostenson Interview - Frostenson states that she has no authority to review Department timecards and supporting timecard documentation. These are maintained at the Fire Department. Tina Carnes, wife of the Chief and mother of firefighter Nick Carnes is responsible for preparing the Department's payroll numbers and submitting those totals to Frostenson. Frostenson in turn directs payment on these amounts without any variance to the numbers reported. Frostenson states that she had no ability to question the reporting chain or payroll numbers reported by Tina Carnes. Frostenson was not granted access to the supporting timecards. Frostenson asserts that during the last City audit, approximately November 2010, she requested authority from Hammer to obtain access to the Department timecards and records. Hammer denied her request. Accordingly, the Department records were not a subject of last year's audit.

A sample of a Department Payroll document provided each payroll period is attached as Exhibit N (2010 sample attached). In most instances, it bears the approval and initials of the Chief. Actual payroll ledgers are then initialed by Hammer for approval (Exhibit N, 2011 sample attached). A random review of the general payroll ledger reflects that Department staff members are paid the hours reported in the Department Payroll submitted by Tina Carnes. Frostenson states that all hours reported by Tina Carnes via the Department Payroll summary are paid out to each employee. That is the controlling document from which she pays Department staff. Frostenson provided several examples to the investigator wherein the general ledger reflected payroll checks issued for the amounts reported by Tina Carnes in her Department Payroll Report.

The Mayor advised the investigator that Tina Carnes claimed that the hours tracked by the Department were not actually hours paid to firefighters. No evidence supports this claim, and due to the potential legal implications of the alleged conduct, none of the Carnes family members were interviewed. Frostenson further indicated that

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Administrator Hammer initials and approves all final payroll documentation, including hours paid out to Department staff.

As to Nick Carnes, Frostenson states that Nick Carnes reported so many hours worked in approximately 2009 and 2010 that the City was required to pay PERSI contributions of \$3743. In 2009, Frostenson believed that Nick Carnes could not actually be working all the hours he reported. She took her concerns to Hammer. Hammer's response was that she saw Nick Carnes on site a lot and that she "hoped" what Frostenson was presenting to her "was not true." For a period of one year, Frostenson claims to have reported her concerns to Hammer regarding Nick Carnes' hours and the PERSI issue. Hammer was non-responsive to her and told her to talk to the Chief. Frostenson stated that she has emails to Chief and Hammer on this issue, but she currently did not have access to her emails while on administrative leave. She also recalls talking to the Chief directly about her concerns. He was not rude to her, but no solution was provided to her. Frostenson also claims that in approximately 2011, Hammer told Frostenson that there were people in the Department who had made accusation to her about the Fire Department. Hammer did not provide her with names or content.

Timecard Documentation:

The investigator was provided with timecard files from the Department for what appears to be 2009 through current. Since approximately 2009, Tina Carnes has been responsible for Department payroll, including submitting the total payroll time to be paid to the City Treasurer. The timecards are difficult to assess since the files were received in disarray. Most of the records and timecards are missing years and signatures. A review of the timecards shows a complete lack of procedure, accuracy or responsible recordkeeping. Many files were disorganized to the point of containing loose timecards with no year, no signatures by employees or supervisors and no logical framework to support the time recorded.

Below are a few time records the investigator reviewed and analyzed pertaining to Nick Carnes:

Nick Carnes:

January 2009 (Exhibit O)

Handwritten time record (no official timecard) supports 107.5 hours worked despite attached calculator tape reflecting 103 hours. Payroll Department form reported 164 hours worked by Nick Carnes.

July 2009 (Exhibit P)

Nick Carnes' timecard reports 17 hours for Hydrants and 66 hours for "other." Payroll Report to Finance Director reports 106 Fire hours and 17 Hydrant.

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October 2010 (Exhibit Q)

Handwritten itemized worksheet reflects 53 hours. Actual timecard reports 68 hours. Entries from worksheet are altered when added to timecard. For example, 10/25 same description, "clean chief office" is changed from 4.0 to 6.5 hours. "Clean T3/shirt order" is changed from 5.0 to 5.5. The timecard is missing employee and supervisor signature. An accompanying handwritten payroll chart for same period shows no total hours worked for N. Carnes, but shows 10 hours in column (10/14 - 1 hr.; 10/24 - 2 hrs.; 11/6 - 1 hr.; 11/5-11/06 - 6 hrs). The first two entries (10/14 and 10/24) are not reflected in the timecard. The 11/5-11/6 entries are reflected as a total of 15 hours in the timecard as compared to the 7 total hours reflected on the log. Payroll Report to Finance Director cites Nick Carnes as working 68 hours.

November 2010 (Exhibit R)

Time card records Fire - 47; Snow removal - 13. Payroll Report to Finance Director reports 62 Fire hours and 13 Snow Removal. Handwritten log does not match timecard. Timecard unsigned by employee and supervisor.

February 2011 2/14 through 3/13 (Exhibit S)

Handwriting appears different than prior Nick Carne timecards. Timecard is unsigned. Timecard total reported is 31 hours. Payroll Report to Finance Director for payment reports 47 hours.

March 2011 3/15-4/10 (Exhibit T)

Unsigned Nick Carnes' timecard reported 33 hours. Payroll Report cites 41 hours.

April 11 through May 9 2011 (Exhibit U)

No timecard submitted by Nick Carnes, but Payroll Report reported 20 hours to Finance Director for payment

June 2011 (Exhibit V)

Unsigned Nick Carnes' timecard total is 32 hours. Payroll report submitted for payment totals 65 hours.

July 2011 (Exhibit W)

Unsigned Nick Carnes timecard in different handwriting. Total of 65 hours reported on timecard. Payroll report 78 hours.

Note: While reviewing timecards, there appeared inconsistencies among other payroll hours reported by T. Carnes to the City Treasurer. While not as significant as those

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reported for Carnes and Prior, all timecards and records for each Department employee should be reviewed and independently audited to ensure that hours were accurately reported and paid.

Issue #2 - Falsification of Payroll Reports - Underreporting Mal Prior's Actual Time Worked

Frostenson states that on-call firefighters do not receive PERSI because they are considered part-time employees with no benefits. They are required to be paid for all hours worked, including meetings, drills, calls, training time and general work performed on behalf of the City. Frostenson states that at the end of July 2011, she had a discussion with the Chief and Hammer about Prior's hours. He had worked 36 hours of City time to prepare for a BLM fire and Frostenson advised them that she cannot obtain reimbursement from BLM for those hours. Frostenson states that she told Hammer and Chief that they must pay Prior for those worked hours. She also cautioned them that if he is working off the clock and gets injured, there could be a workers' compensation issue. Frostenson pointed to Exhibit X to demonstrate that Prior was not paid for those hours that were discussed with the Chief and Hammer. The timecard for July 2011 reflects 77 reported hours by Prior. Tina Carnes only reported 40 hours for the period to the Finance Director for payment. The paycheck issued to Prior for this period only covered 40 hours of reported work (Exhibit X)

Prior states that he is not paid for all hours he actually works. He is only allowed to be paid a maximum of 79 hours per month. If he works 80 or more hours a month or twenty or more per week he would have to receive benefits, including PERSI. He believes that under state law employees who work more than 20 hours per week must be provided benefits. He states that he only gets paid for four hours per day, five days per week. Unlike other workers, he does not get paid for additional time worked such as going on calls. Frostenson told him he could only work 79 hours. Tina Carnes and the Chief also have told him that he cannot work more than 79 hours; however, the Chief lets him do so. For example, during the week of November 28-December 4, 2011, Prior covered as backup Chief since Franco is on vacation. He will not be paid for this time even though he will be covering and attending a meeting. If Prior complains, he will not receive his 79 hours so he does not complain. He states that Mayor, Councilman Ribb, Frostenson, Hammer and the Chief know he is working more hours. Hammer also knows because she sees him working.

Upon request for the amount of hours worked but not paid, Prior submitted the following totals via an email dated December 13, 2011 (Exhibit GG):

2009 184 unpaid hours
2010 563 unpaid hours
2011 582 unpaid to date

In Prior's email, he wrote, "I also have an email from Fire Chief thanking me for working and not getting paid except for calls. Sharon Hammer responded to email." (Exhibit GG)

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The referenced emails are included as Exhibit HH and are dated June 28 and June 29, 2011.

Franco states that "Mal Prior is the one getting the shaft." Franco reports that Prior is working off the clock. Or, in some instances Tina will take Prior's reported hours and will reduce them before she turns them in for payroll. Franco states that "you can't cheat people out if they work." Franco states that "they don't want to pay his (Prior's) PERSI." Franco states that talking to the Chief about it "does no good."

Time Records for Mal Prior:

A few payroll cycles were reviewed for Prior. See below summary:

November 2010 (Exhibit Y)

Prior submitted a signed two-page timecard reporting 83 hours Fire and 4 hours Street labor. Payroll submitted to Finance Director only reflects 75 hours Fire and 4 Street.

December 2010 (Exhibit Z)

Prior submitted signed two-page timecard (no supervisor signature); 85 hours Fire and 10 hours Snow reported; Payroll to Finance Director reported 10 Street and only 68 Fire.

February 14, 2011 through March 13, 2011 (Exhibit AA)

Signed timecard reflects 82 hours actually worked when count each entry, total appears to be 82 and then crossed out and changed to 69 hours. Payroll reported 78 hours to CT

July 2011 (Exhibit X)

Prior's signed timecard reports 77 hours worked; Payroll reports only 40 hours worked. Paycheck 45868 shows only 40 hours paid to Prior.

Issue #3 - Misuse of Chief Carner' City-Issued Gasoline Credit Cards

Mal Prior asserts that the City's gasoline credit cards are misused; specifically, the Chief and Nick Carner are filling up their private vehicles with the City gasoline card. Prior states that he advised Hammer of this concern in the Summer of 2011. Hammer "just listened, but didn't do anything because it is still going on."

Franco states that there is a Brico/United Oil gas card for each of three City Department vehicles - the Chief's car, Franco's car and pickup truck. The cards are left in the vehicles. Franco states that it is clearly understood that no one is authorized to fill up personal cars using the City gas cards. Franco asserts that Nick Carner has filled up his personal vehicle with City gas card. Although he has not witnessed it, Franco's review of the bills

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has caused him to conclude there is misuse by the Carnes'. Franco has kept a calendar when he suspects personal use. Franco is willing to produce all documentation, including the calendar. He states that Nick Carnes drives a Chevrolet white pickup truck and fills up in Ketchum at Brico. Franco is unsure whether Brico has surveillance videos.

Franco states that the Chief knows about this, and the Chief looks at the bills. When Franco thinks the bills are excessive, Franco does not sign them. Franco "does not want any part of that." Franco states that the gasoline bills will show red flags because multiple fill-ups occur within 7 minutes. Franco states that the gas cards also indicate what alleged City vehicle is being filled. Franco receives documentation via email regarding the gas bills, and he has maintained copies of them. He will provide all documentation supporting misappropriation of City funds. He does not have many documents in his actual possession.

Credit Card Statements: The investigator did not have possession of the City's gasoline credit cards.

Issue #4 - Misuse of Carnes' City Credit Card

Franco states that any privilege Nick Carnes wants he is given. "He has cart blanche." Franco states that he has reviewed bills and is aware that Nick Carnes uses the Chief's City credit card to purchase personal items. Franco reported his concerns to Hammer a few times in 2010. He asked her why "a certain person is able to use credit cards a couple of times; went on backcountry training in Stanley and Nick had the credit card there and the card was in his hands and others didn't get to use it but he did." Dates unknown. Franco claims that Nick Carnes has made local charges for food on the Chief's City card as well. To his knowledge, Nick is not an authorized user of the card. Franco states that Hammer told him that she would look into it. However, she never got back to Franco and nothing changed. Franco concluded that she was not looking into it or doing anything about it. Franco states that he went two or three times to Hammer to try to make her aware of his credit card misuse concerns.

Franco states that Nick Carnes has purchased items that are not business related. Franco is aware of a helmet for \$400 that no other Department employee received; the other workers use hand-me-downs. Nick Carnes does not keep the helmet at the Department; everyone else uses equipment that is at the station. Franco was not present when Nick Carnes purchased the helmet, but heard Nick talking about it and saw it when Nick received it. Franco states that the Carnes do not hide their use of the City card; they openly use it for personal purchases. Recently, the Carnes spent \$2500 on Nick Carnes' snowmobile. "better boards, exhaust pipe, clutch" using the Chief's City card. Nick replaces climbing boots a lot. The firefighters get only one pair and a suit for the backcountry teams, but Nick Carnes goes through boots that he purchases on the Chief's City card. Franco also states that Nick Carnes' personal snowmobile is allegedly "rented back" by Nick to the City. Franco stated that most recently he believes Chief or Nick purchased Green Monster shoes on-line for personal use.

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Mal Prior claims that the Carnes family uses the Chief's City-issued credit card as their own. He states that "Nick buys stuff all the time" on the City card and has the number memorized. Prior has witnessed Nick Carnes purchasing items on-line with the City card. Prior does not know if what he is purchasing is appropriate, but it does not seem right to him that Nick Carnes is using the card. A few months ago, Franco told him that Nick Carnes was no longer allowed to use the Chief's credit card. However, Prior feels that Nick Carnes is still using it. Nick Carnes gave the Chief's City credit card number over the phone when purchasing a \$400 snowmobile helmet. He stated that helmets are not clearly a personal item, but Nick Carnes does not leave his helmet at the Department. Also, Nick Carnes being the only one to get a \$400 helmet is "weird."

Prior reported to Hammer this past summer that the Carnes' were possibly misusing the City credit card. To his knowledge, no action was taken by Hammer, because Nick Carnes continued to use the card after his meeting with Hammer.

Credit Card Statements: The investigator had possession of FY 2010 credit cards. Attached as Exhibit BB is the Chief's credit card statement and receipt for purchase of a \$399.99 helmet. No signature is on the receipt since it was an on-line purchase. Exhibit CC sets forth a credit card purchase at Zappos.com that was unsupported by a receipt. City employee, Tammi Hall, had to request repayment of the amount. Tina Carnes indicated to Hall via email that Jeff had accidentally made a personal purchase of shoes on the card. Payment was promised, but the investigator does not have a confirmation of repayment at this time. Other credit card receipts do not contain the signature portion and/or are on-line or non-signature-required purchases. Witnesses will need to review and confirm which charges are for non-business purchases.

Issue #5 - Missing City Property

Prior states that the City owned a motorcycle and it suddenly disappeared in the Winter of 2010. He believes the Carnes family may have used it as a trade-in at Rexburg Motor Sports to purchase a personal snowmobile. Franco also states that a Department motorcycle disappeared and a Carnes' personal snowmobile was purchased at Rexburg Motor Sports. "Everyone thought they did that" (referring to misappropriating City property to purchase a personal snowmobile).

Issue #6 - Misappropriation of Volunteer Firefighter Association Funds

Franco states that the Ketchum/Sun Valley Volunteer Firefighter Association is separate from the City. This was confirmed by Frostenson, who has no financial access or duties with regard to this Association. Franco states that it has its own federal and state identification number. Ketchum/SV Volunteer Firefighter Association. Franco states that the Association "got in trouble last year" with IRS. It is run by volunteer officers, and Hammer is now the Treasurer.

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Prior contends that Costco purchases made from the Volunteer Firefighter Association funds are diverted to the Carnes' household. Prior complained this past summer to Hammer about his belief that the Volunteer Firefighter Funds were being mishandled. He cited improper use and lack of control of the funds. He is unaware of any investigation taking place, but Hammer's solution was that she became Treasurer of the Volunteer Firefighter Association and took over the account.

Franco stated that there had been food purchases diverted to the Carnes household from that fund. City firefighter Todd Tann Robrahn reported to Franco that on two occasions in the Summer of 2010, he witnessed Nick Carnes take Association purchases from CostCo and divert them to his house. Todd witnessed Nick actually stop at Nick's house and drop food off that he did not buy separately (bought with the volunteer foundation money).

Franco said that the Association shut the Costco card down. Franco states that he "sees very much wrong with" this conduct. Hammer was aware of what transpired, and she took over approximately nine months ago as Treasurer to make spreadsheet and balance items. Franco states that Hammer was aware as City Administrator what Nick Carnes was doing. She did nothing about his reported actions even though he is a City employee.

Franco also stated that Nick Carnes would have been hired by the Chief. Staff members have expressed concerns about the Carnes being related and have complained to each other about the special privileges granted by the Chief to his son.

Issue #7 - Sharon Hammer's Failure to Submit Fire Department Timecards:

Sharon Hammer was included in the Fire Department's payroll reporting without submitting timecards to support any hours actually worked. See below hours reported by Fire Department Payroll to Finance Director for 2010 FY, which were paid to Hammer in addition to her City salary:

October 2010 - 10 hours, no timecard
November 2010 - 9.5 no time card
December 2010 - 6.0 no timecard
January 2011 - 4.0 no timecard
Feb 2011 - 7.0 no timecard
March 2011 - 4.0 hours no timecard
April 2011 - 6 hours, no timecard
May 2011 - 0
June 2011 - 0
July 2011 - 3 hours, no timecard
August 2011 - 2 hours, no timecard
September 2011 - 6 hours, no timecard
October 2011 - 14 hours, no timecard
November 2011 - 10 hours, no timecard

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Issue #8 - Potential Double Payments Received by Hammer and Hoffman

Both Mark Hoffman ("Hoffman") and Hammer are full-time exempt salaried City employees. In addition, they serve as paid on-call firefighters/EMTs. At issue is whether Hammer or Hoffman submitted and received multiple payments from the City for work performed within the same work day. Even though the investigator did not locate a policy addressing this issue, it appears that City employees are not allowed to obtain double compensation for the same hours worked. At least two witnesses, Frostenson and Hoffman, confirmed this understanding.

This issue is difficult to assess since Hammer did not prepare Department timecards (see Issue #7 in preceding paragraph) despite receiving extra compensation for Fire Department labor that was in addition to her City Administrator salary. Additionally, it is difficult to ascertain whether Department time worked was on evenings and weekends (for which extra compensation would be allowed) or during the work day (where double payment would not be allowed other than if the employee used paid vacation time from the City). Hoffman submitted time cards, but many are missing or inaccurate and do not reflect specific time periods worked (e.g., 8:00 a.m. - 3p.m.). Hoffman also received additional Department compensation in addition to his City salary. Additionally, since Department timecards have not been provided to the City Treasurer in the past, the City Treasurer was precluded from verifying whether double payments were issued. A full audit is necessary to cross-check Department records against City payroll.

In the investigator's presence, Frostenson did a brief comparison of Department timecards to payroll summaries. One example note by Frostenson was as follows:

- Hammer took time off from her City Administrator position from June 7, 2010 through June 11, 2010 for ropes training with Mark Hoffman. (Exhibit G). Mark Hoffman recorded 9.5 hours for this purpose, while Hammer took the entire week off. No vacation time (coded as 4-01) was taken from her City salary for this purpose, and she received her City salary (Exhibit FF payroll summary). On-call firefighter payments are coded in the payroll as "6-01." Based on the Department's records, Hammer was paid 27 hours additional compensation for June 2010. The Department's time log reflects 12 hours earned by Hammer for services other than ropes training. Therefore, it appears from the reconciliation that Hammer was paid 12 hours for ropes training in addition to her continued City salary. Frostenson states that Hoffman's records also cannot be reconciled. (Exhibit FF)

Frostenson states that there are multiple instances wherein she cannot reconcile Department timecards to payroll given to the City Treasurer. She would need to conduct a full reconciliation analysis or have an auditor determine the extent of the issue.

Preliminary Findings as to Issues #1 - #8

Nick Carnes:

Of the records reviewed, the time submitted on Nick Carnes' timecard was consistently less than the time submitted to the City for payment. In these cases Tina Carnes added time to the records without explanation. This review indicates overpayment to Nick Carnes. The conclusion reached based upon the review of the records is corroborated by the statements of witnesses who said that they did not believe Nick Carnes worked the number of hours for which he was being paid. This situation continued for two reasons. First, employees feared for their positions should they speak up. Second, the City Treasurer did not have authority to review the time records prior to payment. Multiple witnesses, including the City Treasurer and Assistant Fire Chief raised these concerns with Hamner; however, they were not addressed. Based upon the information reviewed to date there is a strong indication that the time submissions were fraudulent. The investigator suggests that further auditing of this process be performed by the City's outside auditors.

Mal Prior:

Based upon the records reviewed and Prior's statements, the Fire Department's pay practices relating to Prior's compensation are a clear departure from basic wage and hour law principles. It appears that Prior was not paid for hours worked and for overtime hours. In addition, the misstatement of his hours precluded his participation in the normal full time benefits. This issue should be fully audited by the City's outside auditors.

Remaining Issues Contained in 3-8:

Sufficient evidence exists of potential falsification of documents, misuse and/or misappropriation of City property and funds, and improper use of Association funds to warrant a full audit and outside investigation of these issues. Witnesses should be interviewed in conjunction with their review of documentation so that they can guide investigators as to which charges were made for personal purchases and by whom the charges were made.

It is clear that the reporting relationship between the Chief, Jeff Carnes and Tina Carnes created a conflict of interest in violation of 7.3. Sufficient evidence also exists to trigger an investigation regarding whether the City has complied with Idaho statutes pertaining to nepotism.

Sufficient evidence also exists to support a finding that Hamner was made aware of the issues set forth above and did not notify the Mayor or take immediate action to trigger a formal audit of the situation or to address the issues. This conduct is inconsistent with her duties as the City Administrator. Hamner and the Carnes family members were not interviewed with regard to these allegations due to the potential legal implications.

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Dated this 20th day of December, 2011.

Management Northwest

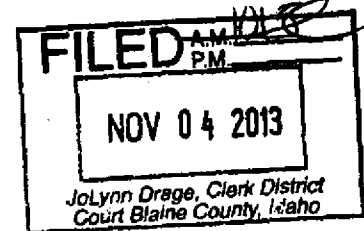


By _____
Patricia Latham Ball

ORIGINAL

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
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Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**

AFFIDAVIT OF ATTORNEY JAMES R. DONOVAL
RELATED TO MOTION TO COMPEL

I, JAMES R. DONOVAL, first duly sworn on oath, depose and state as follows:

1) That my name is James R. Donoval, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) I represented the Plaintiff herein Sharon R. Hammer ("Ms. Hammer") in the matter of Hammer v. Ribi, et al., CV-2011-928, Blaine County, Idaho (the "2011 IPPEA Law Suit"). The document attached as Exhibit A is a true and accurate copy of the front page of the Verified Complaint For Damages And Injunctive Relief Pursuant To The Idaho Protection Of Public Employees Act filed on November 21, 2011 in the 2011 IPPEA Law Suit.

3) Attached as Exhibit B is a true and accurate copy of a letter I sent on November 23, 2011 to Sun Valley City Attorney Adam King ("City Attorney King"), attorney Brad Miller and attorney Kirtlan Naylor ("Attorney Naylor") seeking specific written confirmation as to the authorization from Sun Valley for either City Attorney King, attorney Brad Miller or Attorney Naylor to act as legal counsel for Sun Valley and specifically for what matters and in what capacity. Neither City Attorney King, attorney Brad Miller or Attorney Naylor responded in any way to the letter of November 23, 2011.

4) On November 28, 2011, prior to Ms. Hammer's interview with Sun Valley retained fact finding investigator Patricia Latham-Ball ("Investigator Ball"), I asked Investigator Ball who Investigator Ball would be making her report of the interview to. Investigator Ball responded that she would have to make a phone call about the issue. After making a phone call, Investigator Ball told both Ms. Hammer and I that she "reported to Kirt Naylor". I objected to Investigator Ball reporting to Attorney Naylor, whose sole role should have been to defend Sun Valley, Sun Valley City Council Member Nils Ribi and City Attorney King in regards to the 2011 IPPEA Law Suit, and not to have any involvement in what was supposed to be an "independent" investigation.

Former Sun Valley Mayor Wayne Willich ("Former Mayor Willich") subsequently told me that that the telephone call that Investigator Ball made on November 28, 2011 was not to him. Former Mayor Willich also subsequently told me that Attorney Naylor was not supposed to have any role in the investigation that Investigator Ball was working on, nor was Investigator Ball supposed to report to Attorney Naylor for any matters regarding Sun Valley.

5) On January 11, 2012, I attended a hearing in the 2011 IPPEA Law Suit in which Attorney Naylor disclosed that the written report prepared by Investigator Ball had been released to the Blaine County Prosecutor at some time prior to the January 11, 2012 hearing. Attached as Exhibit C is a true and accurate copy of the transcript of the portion of the January 11, 2012 hearing in which Attorney Naylor admits that the written report of Investigator Ball had been released to the Blaine County Prosecutor.

6) In the hallway of the Blaine County Courthouse, after the conclusion of the January 11, 2012 hearing in the 2011 IPPEA Law Suit, Attorney Naylor told me that he was going to make sure that Ms. Hammer was criminally prosecuted and that her career would be ruined.

7) I am acting pro se in the matter of Ribi v. Donoval, CV-2011-1040, Blaine County, Idaho (the "Ribi v. Donoval Law Suit"), in which the plaintiffs' causes of action against me for defamation and emotional distress have already been dismissed at summary judgment. My counter claims against plaintiff-counter defendant Nils Ribi for defamation and emotional distress are still pending in the Ribi v. Donoval Law Suit.

8) During the course of the Ribi v. Donoval Law Suit I sought some of the documents now being sought from Sun Valley and Investigator Ball by Ms. Hammer herein, including the written report(s) of Investigator Ball.

9) Attached as Exhibit D is a true and accurate copy of an Affidavit City Attorney King filed on August 30, 2012 in the Ribi v. Donoval Law Suit in opposition to my request for production of the documents I was seeking from Sun Valley and Investigator Ball.

10) Attached as Exhibit E is a true and accurate correct of an Affidavit filed on August 30, 2012 by Investigator Ball in the Ribi v. Donoval Law Suit in opposition to my request for production of the documents I was seeking from Sun Valley and Investigator Ball.

11) Attached as Exhibit F is a true and accurate copy of a document dated December 20, 2011 ("the "Unauthorized Ball Report") which the Idaho Mountain Express newspaper began publishing in its on-line section on or about November 21, 2012, and which has been continuously published in the on-line section of the Idaho Mountain Express newspaper since that time.

12) In August of 2012, a forensic auditor hired by Sun Valley issued a written report which extensively quoted the Unauthorized Ball Report (the "Forensic Audit Report"). On approximately November 21, 2012, the Idaho Mountain Express newspaper began publishing in its on-line section the Forensic Audit Report, which has been continuously published in the on-line section of the Idaho Mountain Express newspaper since that time.

13) In October of 2012, the Idaho Attorney General's office issued a written report which extensively quoted the Unauthorized Ball Report (the "AG Investigator Report"). On approximately November 21, 2012, the Idaho Mountain Express newspaper began publishing in its on-line section the AG Investigator Report, which has been continuously published in the on-line section of the Idaho Mountain Express newspaper since that time.

14) On November 21, 2012, the Blaine County Prosecutor issued a written report related to allegations of misconduct against Ms. Hammer (the "Prosecutor No Probable Cause Finding"), a true and accurate copy of the relevant portions of which are attached as Exhibit G. The Prosecutor No Probable Cause Finding has been continuously published in the on-line section of the Idaho Mountain Express newspaper since November of 2012.

15) Attached as Exhibit H is a true and accurate copy of a document defining City Attorney King's duties as the Sun Valley City Attorney, adopted by the Sun Valley City Council on December 18, 2008.

16) Attached as Exhibit I is a true and accurate copy of the written retainer agreement between Sun Valley and attorney Brad P. Miller of Hawley Troxell dated December 13, 2011, limiting attorney Miller's representation of Sun Valley to a public record request matter.

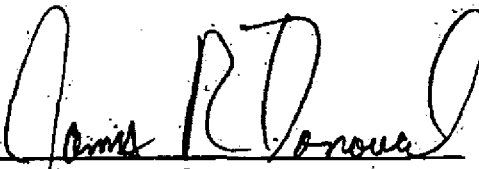
17) Attached as Exhibit J is a true and accurate copy of a letter issued by Sun Valley's insurance company Idaho Counties Risk Management Program ("ICRMP"), dated

December 15, 2011, defining ICRMP's duties to cover Sun Valley, Council Member Ribí and City Attorney King in the 2011 IPPEA Law Suit.

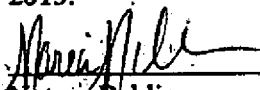
18) Attached as Exhibit K is a true and accurate copy of the written retainer agreement between Attorney Naylor and Sun Valley, dated February 13, 2012, related to documents and a Subpoena issued in the Ribí v. Donoval Law Suit.

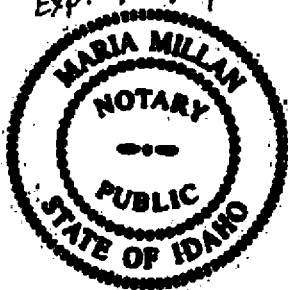
19) Attached as Exhibit L is a true and accurate copy of a letter from ICRMP dated December 14, 2011, which I received on or about December 15, 2011.

Further Affiant sayeth not.


James R. Donoval

Subscribed To And Sworn Before
Me This 1st Day Of Nov
2013.


Notary Public
Exp: 9/24/14



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


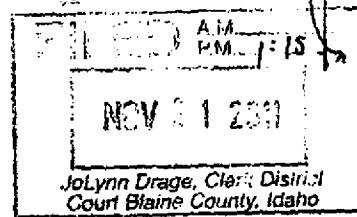

ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT A

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,
Plaintiff,

v.

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation; and,
ADAM KING, an individual,
relief only),
Defendants.

No. CV 2011-928

ROBERT J. ELGEE

**VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT**

NOW COMES the Plaintiff, SHARON R. HAMMER, and in support of her Verified
Complaint states as follows:

1) Plaintiff Sharon R. Hammer ("Ms. Hammer") is a resident of Sun Valley, Blaine County, Idaho. In May of 2008, pursuant to a written City Administrator Employment Agreement, Ms. Hammer was hired as the City Administrator Of Defendant The City Of Sun Valley, in Blaine County, Idaho ("Sun Valley") and (the "City Administrator"). The written City Administrator Employment Agreement has been amended and extended from time to time and is effective through at least May 31, 2012. In 1990, Ms. Hammer graduated with a Juris Doctor degree from Southern Illinois University Law School and was licensed in Illinois. In 1991, Ms. Hammer also received her law license in Tennessee. For several years Ms. Hammer practiced as a prosecuting attorney for Perry, County, Illinois and as the City

EXHIBIT B

JAMES R. DONOVAL

Attorney At Law

**4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com**

November 23, 2011

Adam King, Esq.
PO Box 4962
Ketchum, ID 83340

Kirt Naylor
Naylor & Hales
950 W. Bannock St.
Boise, ID 83702

Brad Miller
Hawley Troxell, et al.
877 Main St., Suite 1000
Boise, ID 83702

Re: Sun Valley Special Investigation

Dear Mr. King, Mr. Naylor and Mr. Miller:

As you are aware, on November 14, 2011, the Sun Valley City Council voted to perform a Special Investigation. It is my understanding that a Special Investigator has been appointed by Mayor Willich. The issues of the Special Investigation and the employees or City Council members under investigation have not been defined and have not been disclosed. Under the circumstances, it is my understanding that City Council member Nils Ribi, Mr. King, Michelle Frostenson and Kelly Ek, are all potential "persons of interest" in the investigation, in addition to Sharon Hammer.

I would like immediate clarification as to who is representing Mayor Willich, the City Of Sun Valley or the Special Investigator in regards to the Special Investigation. I understand that Mr. Naylor is representing the City Of Sun Valley, Mr. Ribi (although attorney Keith Roarke has also filed an Appearance on behalf of Mr. Ribi) and Mr. King in the Idaho Public Employees Protection Act case I filed on behalf of Ms. Hammer (CV 2011-938, Fifth District). However, I have been provided with no indication that Mr. Naylor is representing either Mayor Willich, the City Of Sun Valley or the Special Investigator in regards to the Special Investigation. On November 18, 2011, I sent Mr. Miller a letter asking for specific confirmation of what his role would be in regards to the Special Investigation, yet I still have no response to that request. And as I have stated ad nauseum, because of Mr. King's conflict of interest in having given legal


advise to Ms. Hammer regarding Mr. Ribí's harassment, and now because Mr. King is potentially a "person of interest" in the Special Investigation himself, he cannot have any role himself in the Special Investigation. In addition, Ms. Hammer had a conversation with Mayor Willich in which he said he is not sure that any of the three of you will be involved in the Special Investigation. Therefore, I am requesting a letter or other correspondence, signed by Mayor Willich, indicating that he has specifically retained any of you specifically as counsel for himself, the City Of Sun Valley or the Special Investigator specifically in regards to the Special Investigation by 5:00 p.m. Monday, November 28, 2011, or I will cease to discuss anything related to the Special Investigation with any of you and contact Mayor Willich and the Special Investigator directly. An answer of "I represent the city" is wholly unacceptable. Just as you may represent a municipality in defending a car accident case or in prosecuting municipal violations, that does not mean that you represent the municipality in regards to other matters. Therefore, if I do not receive a document with Mayor Willich's signature on it specifically stating that you represent the City Of Sun Valley, Mayor Willich or the Special Investigator specifically in regards to the Special Investigation by Monday, I will take that as evidence that you don't represent any of them and act accordingly.

In the meanwhile, although most Sun Valley employees are employees "at will", Ms. Hammer is not, as she has a contract with Sun Valley. The City Of Sun Valley's investigation is potentially seeking her discipline or termination "for cause" requiring a much different obligation and process on the part of Sun Valley towards Ms. Hammer as opposed to any other employee, including Mr. Ribí, Ms. Frostenson, Ms. Ek and Mr. King himself. We request that if Ms. Hammer is going to appear for questioning in regards to the Special Investigation that she be provided any and all documents or other evidence of any type that is intended to be used at such questioning at least two days before such questioning, and that she be allowed legal counsel at those proceedings. In addition, if ultimately any allegations are made against Ms. Hammer (which have not been done at this point), we demand a written charging document, that a hearing be held, and that Ms. Hammer have the opportunity to present evidence and witnesses in opposition to any allegations alleged against Ms. Hammer. And should Ms. Hammer be disciplined or terminated, we demand that a written findings of fact and conclusions of law be prepared so that Ms. Hammer has an opportunity to appeal such findings and that a future appellate Court has clear knowledge of what Ms. Hammer was found in violation of and for what reasons. If Mr. Ribí and Mr. King are going to seek Ms. Hammer's termination "for cause" please at least ensure that her due process rights are protected in the meanwhile.

Since this whole affair began on November 11, 2011, when Mayor Willich and Mr. King gave Ms. Hammer a vague description of what it was she was being accused of, in multiple correspondences and as has been detailed in the Verified Complaint and Emergency Motion For Temporary Restraining Order, multiple individuals have also in turn been accused of violating Sun Valley Policies And Procedures during the covert investigation of Ms. Hammer that Mr. Ribí has commenced. At least subsequent to the election on November 8, 2011, Ms. Frostenson and Ms. Ek violated Section 3.2 of the Sun Valley Policies And Procedures by discussing Sun Valley matters and reporting to Mr. Ribí without Ms. Hammer's or Mayor Willich's authority or

approval. Since the election at least; Mr. King has also violated Section 3.2 of the Sun Valley Policies And Procedures by discussing Sun Valley matters and reporting to Mr. Ribí without Mayor Willich's knowledge or approval. Mr. Ribí, Ms. Frostenson, Ms. Ek and Mr. King all violated Section 7.4 of the Sun Valley Policies And Procedures by disclosing or obtaining Sun Valley confidential and employee information without Ms. Hammer's or Mayor's Willich's knowledge or approval. And Mr. Ribí has been alleged to have violated the Sun Valley Harassment Policy (Section 7.5 of the Sun Valley Policies And Procedures) and multiple provisions of Section 8.4 of the sun Valley Policies And Procedures (i.e. Causes For Discipline Action) over the last three years. Most, if not all, of the allegations against Ms. Hammer appear to be based on Mr. Ribí's, Ms. Frostenson's, Ms. Ek's and Mr. King's own violations of well established Sun Valley Policies And Procedures regarding discussing and disclosing Sun Valley related information, in order to obtain the information that we believe is being used as evidence of wrong doing against Ms. Hammer in the first place. All of these violations against Mr. Ribí, Mr. King, Ms. Frostenson and Ms. Ek are as serious and disturbing as any of the vague assertions that have been made against Ms. Hammer thus far. Should Ms. Hammer be singled out in the investigation, and none of the other individuals are investigated during the Special Investigation, we will raise that as an additional claim that the whole matter is simply a "witch hunt" against Ms. Hammer to support Mr. Ribí's retribution against Ms. Hammer for making harassment claims against Mr. Ribí.

Very Truly Yours,


JAMES R. DONOVAL
Attorney At Law

cc: S. Hammer
P. Ball

EXHIBIT C

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CV-2011-928
)	
NILS RIBI, an individual; THE)	
CITY OF SUN VALLEY, an Idaho)	
municipal corporation; ADAM)	
KING, an individual; and)	
ROBERT YOUNGMAN, an individual,)	
)	
Defendants.)	

EXCERPT OF TRO HEARING

The above-entitled matter came on for hearing on
Wednesday, January 11, 2012, at the hour of 9:30 a.m., at the
Blaine County Courthouse, Hailey, Idaho.

BEFORE: The Honorable Randy Stoker

A P P E A R A N C E S

For the Plaintiff:

JAMES R. DONOVAL, ESQ.
Attorney at Law
P. O. Box 1499
Sun Valley, Idaho 83353

For the Defendants:

KIRTLAN G. NAYLOR, ESQ.
Naylor & Hales, P.C.
Attorneys at Law
950 West Bannock Street
Suite 610
Boise, Idaho 83702

For the Defendant:
(Nils Ribi)

R. KEITH ROARK, ESQ.
The Roark Law Firm, LLP
409 North Main
Hailey, Idaho 83333

1 WEDNESDAY, JANUARY 11, 2012

2 10:30 A.M.

3 (EXCERPT OF HEARING)

4
5
6 THE COURT: Well, let's talk about then -- if
7 you're going to ask questions of the witness about whether
8 it's a final ruling or whether it wasn't, why do we need to
9 get into the issue of what was communicated by this
10 investigator?

11 MR. DONOVAL: Because what I've read in their
12 response is that things were communicated to the Mayor and
13 they weren't final, so he had no authority to make a final
14 ruling. And what I'm trying to get to is what was
15 communicated to the Mayor that gave him the basis for
16 making a final determination on whether Ms. Hammer -- I'm
17 sorry, Judge, am I confusing you on that?

18 THE COURT: No, I'm following.

19 MR. DONOVAL: Okay.

20 What I think Mayor Willich should be able to
21 testify to is he got enough information out of that report
22 from Ms. Ball related to the allegations against Ms. Hammer
23 that he was entitled to make a final ruling that the new
24 mayor doesn't have a right to vacate. There might be other
25 issues in that report related to either Mr. Ribí or

1 Ms. Frostenson or other issues that were pending in the
2 investigation that Mayor Willich might say, no, I didn't
3 think that those were final, but at least he should be able
4 to testify that the allegations or the investigation of
5 Ms. Hammer were finished and he found nothing for which he
6 needed to go forward with any disciplinary actions. We
7 need to get to that issue and allow Mayor Willich to
8 testify as to what he found in that report as to Ms. Hammer
9 versus other things in the report that he might not have
10 found as to being final. And so to do that, I think we
11 should be allowed to have him testify what his discussions
12 were with Ms. Ball in regards to the report, who is not a
13 lawyer, who does not have attorney-client privilege.

14 THE COURT: Mr. Naylor, has this report been
15 disclosed?

16 MR. NAYLOR: No, Your Honor; and I can
17 represent to the Court that it has been provided to the
18 Blaine County Prosecutor for referral for an independent
19 investi -- review as to any potential criminal conduct, not
20 only related to Ms. Hammer but other individuals, and for
21 that reason, the prosecutor has specifically instructed the
22 City to not disclose the report at the present time to the
23 principals because of the pending investigation.

24 THE COURT: If that's true and that report has
25 been disclosed to a third party, why does that not waive

1 attorney-client privilege if there is one?

2 MR. NAYLOR: As to the report itself?

3 THE COURT: Yes.

4 MR. NAYLOR: Well, that's not what he's asking
5 the Mayor to talk about. He's asking him what
6 conversations Patti Ball had while in the presence of me
7 and Adam King. And any comment by her may have been
8 elicited by questions by us, and the entire conversation
9 was intended to be attorney-client privilege. She was
10 acting as an agent. The Mayor and the Mayor-elect were
11 both principals party to the attorney-client privilege.
12 And, frankly, because of the fact that Mr. Willich has
13 already testified that this was a draft report, it's not
14 the same report that Mayor Briscoe relied upon
15 subsequently. And so the details of the report aren't
16 relevant, it's just what facts and information was relied
17 on for which decision.

18 THE COURT: Well, I'm going to sustain further
19 inquiry, Mr. Donoval, with regard to the contents of that
20 communication.

21 MR. DONOVAL: Or any conversations in regards
22 to that meeting, Your Honor?

23 THE COURT: Yes.

24 (REPORTER'S NOTE: This concludes the requested
25 portion of transcript.)

REPORTER'S CERTIFICATE

I, SUSAN P. ISRAEL, CSR #244, Official Court Reporter, Fifth Judicial District, State of Idaho, do hereby certify that the foregoing transcript, consisting of Pages 1 to 5, inclusive, is a true and accurate record of the proceedings had on the date and at the time indicated therein as stenographically reported by me to the best of my ability and contains all of the material requested.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2012.



SUSAN P. ISRAEL, CSR NO. 244

EXHIBIT D

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
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Attorneys for City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,

Plaintiff-Counter Defendant,

PATRICIA BROLIN-RIBI,

Plaintiff,

vs.

JAMES R. DONOVAL,

Defendant-Counter Plaintiff-Third
Party Plaintiff,

vs.

R. KEITH ROARK,

Third Party Defendant.

Case No. CV-2011-1040

**AFFIDAVIT OF ADAM KING IN
SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO
QUASH SUBPOENA**

I, ADAM KING, having been duly sworn do hereby depose and say as follows:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN
VALLEY'S PETITION TO QUASH SUBPOENA - 1.**

2. I am currently the City Attorney for the City of Sun Valley. I was appointed as City Attorney by the City Council in 2008.

3. The Sun Valley City Council called a special executive session on November 10, 2011, pursuant to Idaho Code § 50-706. I did not know the purpose or the agenda of the meeting before it was actually held.

4. The special executive session was held on November 11, 2011. Michelle Frostenson, Treasurer for the City of Sun Valley, presented allegations to the Sun Valley City Council of potential misuse of public funds and equipment by Sharon R. Hammer, City Administrator for the City of Sun Valley, as well as other City employees.

5. After the executive session, then-Mayor Wayne Willich and I spoke with Ms. Hammer about Ms. Frostenson's allegations.

6. On November 12, 2011, attorney James R. Donoval sent Mr. Willich a letter, copied to the City Council and two citizens recently elected, but not yet sworn in as City Councilmembers. The letter threatened the City of Sun Valley with a lawsuit in connection with Ms. Hammer's allegations of harassment and potential disciplinary action against her for the alleged misuse of public funds and equipment. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit A.

7. The City Council called a second special executive session on November 14, 2011, regarding the allegations of Ms. Hammer's and other employees' potential misuse of public funds and equipment.

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 2.

8. Following the November 14, 2011 session, the City Council authorized a special investigation into the allegations against Ms. Hammer and, in part, because litigation had been threatened.

9. On November 15, 2011, Mr. Donoval sent Mr. Willich, copied to the City Council and the Councilmembers-elect, a second letter stating that Mr. Donoval intended to file a lawsuit in connection with Ms. Hammer's allegations of harassment and any potential disciplinary action against her for the alleged misuse of public funds and equipment. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit B.

10. On November 16, 2011, Mr. Donoval sent Mr. Willich, copied to the City Council and the Councilmembers-elect, a third letter that basically reiterated the prior two letters and offered to settle and avoid a lawsuit. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit C.

11. On November 17, 2011, I contacted Patricia L. Ball, of Management Northwest, and another possible investigator, regarding the City's desire to possibly retain her services for a fact-finding investigation regarding various allegations that could be the subject of litigation.

12. On November 18, 2011, I, along with Mr. Willich and Mr. Briscoe interviewed Ms. Ball and another investigator.

13. Ms. Hammer was placed on paid administrative leave the same day, November 18, 2011.

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 3.

14. On November 21, 2011, the City of Sun Valley retained Ms. Ball for the purpose of conducting an investigation into the alleged violations of City Policy. At that time, I was to be Ms. Ball's legal contact. Ms. Ball and Mr. Willich signed a written Engagement Letter for City of Sun Valley Investigation on November 23, 2011.

15. Ms. Hammer filed a complaint in Idaho's Fifth District Court, Blaine County, against me, the City of Sun Valley and Nils Ribi on November 21, 2011, as *Hammer v. Ribi et al.*, Blaine County Case No. CV-2011-928. Because I was a named defendant in the lawsuit, it was determined that I should not be Ms. Ball's legal contact, to avoid any appearance of a conflict.

17. ~~I forwarded the complaint to the City's insurance carrier in accordance with our policy for coverage.~~ ~~Killian G. Naylor, Naylor & Hales, P.C.~~ was assigned to provide legal defense for the City of Sun Valley on November 22, 2011.

18. Sun Valley officials decided on or about November 28, 2011, that Mr. Naylor would be Ms. Ball's primary legal and process contact and all coordination was to go through him. Ms. Ball was to report substantive issues directly to Messrs. Briscoe, Willich and myself.

DATED this 28th day of August, 2012.


Adam King

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 4.

EXHIBIT E

Kirtlan G. Naylor [ISB No. 3569]
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Attorneys for City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,

Plaintiff-Counter Defendant,

PATRICIA BROLIN-RIBI,

Plaintiff,

vs.

JAMES R. DONOVAL,

Defendant-Counter Plaintiff-Third
Party Plaintiff,

vs.

R. KEITH ROARK,

Third Party Defendant.

Case No. CV-2011-1040

**AFFIDAVIT OF PATRICIA LATHAM
BALL IN SUPPORT OF NON-PARTY
CITY OF SUN VALLEY'S MOTION
TO QUASH SUBPOENA**

I, Patricia Latham Ball, having been duly sworn do hereby depose and say as follows:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 1.**

2. I am an attorney licensed in the State of Idaho, Washington and California and currently own and operate Management Northwest, an employment and human resources law practice. I also provide investigations relating to alleged violations of law and policy, suspected theft, misappropriation, harassment and discrimination. I founded Management Northwest in 2002.

3. I was contacted by Sun Valley City Attorney Adam King on November 17, 2011, regarding the City's desire to possibly retain my services for a fact-finding investigation regarding various allegations that could be the subject of litigation.

4. I had an interview with Mr. King, then-City Council President Dewayne Briscoe and then-Mayor of Sun Valley, Wayne Willich, on November 21, 2011.

5. On November 21, 2011, I was retained by the City of Sun Valley for the purpose of conducting an investigation into alleged violations of City policy. On November 23, 2011, I signed, as did Mr. Willich on behalf of the City of Sun Valley, an "Engagement Letter for City of Sun Valley Investigation."

6. My role was to act solely as a fact-finding investigator regarding whether there were violations of Sun Valley City policy regarding specific allegations as provided to me from Mr. Willich and the City Council. I was aware of the threatened litigation and the complaint that was filed.

7. My initial attorney contact regarding the investigation was with Mr. King, as the City Attorney for the City of Sun Valley.

8. I arrived in Sun Valley to begin conducting interviews on November 28, 2011. Sun Valley officials informed me that Kirtlan G. Naylor, Naylor & Hales, P.C., would be my primary

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 2.**

legal and process contact, and all coordination was to go through him. I was to report substantive issues directly to Mssrs. Briscoe, King, Willich and Naylor.

9. Throughout the course of my investigation, I sought legal advice and guidance for the investigation through Mr. Naylor, with full approval and consent of the City of Sun Valley.

10. On November 30, 2011, Mr. Naylor informed me, on behalf of the City, that the scope of my investigation was to be expanded into additional and newly brought allegations.

11. I conducted my investigations into the various allegations over the following weeks. This included approximately four (4) days of interviewing witnesses, additional telephonic interviews, several days of evidence review, analysis, communications and drafting the report.

12. I completed the factual basis of my report on December 9, 2011, and thereafter presented a draft version of the report for review to Mr. Willich, the City Council, Mr. King and Mr. Naylor on December 12, 2011.

13. I finalized my report and analysis on December 20, 2011.

14. My report consisted of an application of the discovered facts to potential violations of city policy.

15. On or about July 22, 2012, I was served a "SUBPOENA FOR PRODUCTION OF DOCUMENTS" from a process server for James R. Donoval, *pro se* litigant in the above captioned case. A true and correct copy of the Subpoena is attached hereto as Exhibit A.

16. The Subpoena commands that I produce numerous items identified in an attachment to the Subpoena. The gist of the commands is that I produce any and all documentation related to my investigation.

AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S MOTION TO QUASH SUBPOENA - 3.

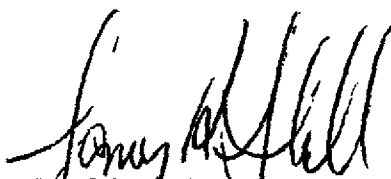
17. Because the Subpoena sought the investigative report and all related materials that were prepared on behalf of Sun Valley in anticipation of litigation, and also requested privileged communications, I informed the City of the Subpoena.

DATED this 30th day of August, 2012.



Patricia Latham Ball

SUBSCRIBED AND SWORN TO before me this ____ day of August, 2012.



Notary Public for Idaho
Residing at: Boise
Commission Expires: 2/15/14

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 4.**

EXHIBIT F

THIS DOCUMENT IS PROTECTED BY ATTORNEY WORK PRODUCT PRIVILEGE

City of Sun Valley - Investigative Report

December 20, 2011

Patricia Latham Ball, Esq.
pball@mnwlegal.com
www.mnwlegal.com
Ph: (208)342-7342 - Fax: (208)975-7885

HAMMER/CARNES
007
2012-002

1
BALL 1

INTRODUCTION

On November 21, 2011, the undersigned was retained by the City of Sun Valley ("the City") to perform an investigation concerning complaints raised relating to alleged violations of the City of Sun Valley Personnel Policies & Procedures Manual ("Manual") by City Administrator Sharon Hammer ("Hammer"). Specifically, the City requested that the undersigned conduct an investigation relating to a complaint lodged by the City Treasurer, Michelle Frostenson ("Frostenson") relating to Hammer's alleged misconduct. On December 2, 2011, the City requested that the scope of investigation be broadened to include a preliminary evaluation of potential violations of conduct within the City's Fire Department.

The potential violations by Hammer were reported by Frostenson to Mayor Willich on October 5, 2011, Ribi on November 10, 2011 and the City Council on November 11, 2011. Frostenson, Hammer and City Clerk Kelly Ek ("Ek") were placed on administrative leave pending an internal investigation.

INVESTIGATION PROTOCOL

The investigation consisted of:

A. Interviews of the Following Individuals:

1. Michelle Frostenson, City Treasurer
2. Sharon Hammer, City Administrator
3. Kelly Ek, City Clerk
4. Wayne Willich, Mayor
5. Dwayne Briscoe, Mayor-Elect
6. Nils Ribi, Councilman
7. Connie Morris, Police Officer
8. Mark Hoffman, Development
9. Cameron Daggett, Police Chief
10. Mal Prior, Firefighter
11. Adam King, City Attorney
12. Ray Franco, Assistant Fire Chief

Witnesses were interviewed at the law offices of Hawley Troxel in Hailey, Idaho or telephonically. Frostenson participated in a follow-up interview in Boise, Idaho. Witnesses were instructed that the investigation was confidential. They were also advised that retaliatory conduct would not be tolerated against witnesses participating in the investigation.

OVERVIEW OF FINDINGS

Sufficient evidence exists to support multiple violations of City policy by Hammer. Since the documentation and witness statements resulted in evidence that could also legally implicate Hammer, a follow-up interview was not conducted with Hammer. Additionally, preliminary interviews pertaining to City Fire Department concerns supported possible violation of City policy and law. Accordingly, no interviews were conducted with Chief Jeff Carnes, Tina Carnes or Nick Carnes. These matters should be immediately referred to an outside agency for further audit and investigation of possible civil and/or criminal violations.

ALLEGATIONS AND INVESTIGATOR'S FACTUAL FINDINGS

Sharon Hammer

Use of City Vehicle

Frostenson alleges that Hammer has violated the City's policy in her personal use of a City-owned vehicle, a 2001 Ford Expedition ("City Vehicle"). Section 3.13 of the Manual states in pertinent part:

"City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor."

In response to the existence of Manual Policy number 3.13, Hammer contends that the Mayor had authority to change the terms and conditions of her employment based upon paragraph 10 (A) of her Employment Agreement (Exhibit A), which was extended via an Agreement Extension (Exhibit B). The Employment Agreement, Paragraph 10 (A) states:

"The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement."

Hammer admits that she has openly used the City Vehicle for both personal and business purposes since commencing her employment in June of 2008. In a signed written statement entitled "Use of City Vehicle" dated November 28, 2011 and provided to the investigator (attached as Exhibit C), Hammer states that when she first moved to Sun Valley in June of 2008, she did not have a vehicle. Hammer asserts as follows:

"Mayor Willich authorized me to use the Ford Expedition whenever I needed it, even for personal use. Because of the proximity to City Hall, I left the Ford Expedition at City Hall every night and walked to and from work every day."

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Based on the approval of Mayor Willich, I used the Ford Expedition for personal use."

Hammer further writes:

"In October of 2008, I and my husband moved...approximately 1.7 miles from City Hall and the City Hall Fire Station. At that time, I had a discussion with Mayor Willich regarding continued use of the Ford Expedition. Mayor Willich specifically told me that I could continue to use the Ford Expedition at all times, including for commuting to City Hall and for personal use. We discussed that I had become a member of the Sun Valley Fire Department and the need for my availability to respond to Fire Department pages....." (Exhibit C)

Hammer admits that she maintained possession of the City Vehicle and has operated it "for personal use such as going to the gym and to the grocery store." She has also used this vehicle when responding to pages "from the gym, the grocery store, the movie theater and the golf course" as well as "social events." She contends that Mayor Willich and City Council members have viewed her operating the City Vehicle "in the evenings, weekends and holidays."

"Not once in over three years did any member of the City Council question me about the use of the Ford Expedition even though my use of the Ford Expedition was conspicuous. At all times, my use of the Ford Expedition was done with the explicit approval and the authority of Mayor Willich." (Exhibit C)

Hammer admits that she had been questioned by Frostenson regarding her personal use of the City Vehicle. Frostenson states that she raised the issue several times as a violation of policy, and that Hammer only responded, "I know." Frostenson states that most recently she complained to Hammer on September 19, 2011 and September 22, 2011, when Hammer had the vehicle in Boise while on personal time. Hammer claims that she advised Frostenson that there was an agreement allowing her personal use.

Mayor Willich states that he does not specifically remember authorizing Hammer's personal use of the City Vehicle, but he "might have said that." Mayor Willich expressed that he had no real objection to its use for personal and business. Neither Hammer nor Mayor Willich presented the investigator with any written email, amendment or memorandum authorizing Hammer's personal use of the City Vehicle. Witnesses interviewed agreed that they had viewed Hammer openly driving the City Vehicle for business and personal use. Mayor-Elect Dwayne Briscoe stated that he was unaware that a City policy existed prohibiting personal use.

Both Mayor Willich and Hammer referenced the age and lack of value of the City Vehicle to support a finding that there was no violation. Hammer wrote that the City Vehicle "has been fully depreciated in Sun Valley's financial records and is currently only worth approximately \$3,500 in Blue Book trade-in value." (Exhibit C). Mayor Willich

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expressed that it was a surplus vehicle that he "should have just sold to" to Hammer "for \$300."

Findings:

Sufficient evidence exists to support a violation of Policy 3.13 of the City's Manual.

Whether the Mayor authorized Hammer to bypass Policy 3.13 is unclear from the facts. While the Mayor claims that he may have granted her authority, there is no documentary evidence supporting this authorization. Furthermore, even if the Mayor had authorized a departure from Policy 3.13, it does not appear that he had authority to do so under Hammer's contract or the Manual.

While Paragraph 10 (A) of Hammer's Employment Agreement permits the Mayor to "fix such other terms and conditions of employment as he may determine from time to time to be appropriate," the Mayor is only authorized to do so as it relates to "performance of Employee" and only to the extent that such other terms are "not inconsistent with or in conflict with the provisions of this Agreement." This Agreement incorporates the Personnel Manual into the Agreement in that it specifically states in Paragraph 10 (b) that "all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer." (Exhibit A, emphasis added). "Benefits" would include use of the City Vehicle. It further states in Paragraph 12 A that "the text herein shall constitute the entire agreement between the parties." Additionally, the Manual specifically states that "in order to maintain efficient and effective city services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered."

Additionally, Hammer's Employment Agreement commenced on June 1, 2008 with no fixed term. It was amended on September 17, 2009 to state that it "shall automatically renew on its anniversary date (June 1st) for a period of one (1) year hereinafter unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date." According to the Agreement Extension, the Employment Agreement between the City and Hammer renewed automatically on June 1, 2010 and expired under its own terms on June 1, 2011. Any contractual authority interpreted to be granted her for personal use of a City Vehicle at inception of employment would arguably have expired on June 1, 2011.

Accordingly, there appears to be no authority either in the Manual or contractually for the Mayor to circumvent Policy 3.13. Whether the City considers the openly accepted personal use of the City Vehicle by the Mayor and Councilman as a mitigating factor is not within the scope of this investigation.

Use of City Credit Card for Personal Fuel Charges

City Treasurer Frostenson raised concerns to City Council and the Mayor that Hammer's fuel purchases for FY (fiscal year) 2010 (October 2010 through October 2011) on her City-issued credit card appeared excessive at approximately \$1700. She expressed concern that Hammer was using the City-issued credit card to purchase fuel for personal use. A preliminary audit of these fuel charges by the investigator confirms that this estimate is accurate if not higher. A few credit card statements could not be located, and a few receipts were missing, all of which could drive the number higher.

Since Hammer openly used a City-owned vehicle for personal and business use, a mileage log would be the controlling document to determine whether City funds were appropriately used. Hammer neither maintains a log nor other documentation tracking the number of miles driven each year for business versus personal. Her omission now makes it impossible to ascertain the exact amount of fuel consumed for each purpose.

Hammer states that she used both her City-issued credit card and a personal Capital One or MasterCard credit card to fuel the City Vehicle. She denies ever using the City credit card to purchase fuel for any vehicle other than the City Vehicle. She produced a summary of what she contends were personal gas purchases for the City Vehicle (Exhibit C). The documentation does not reference a license plate number, so there is no ability to confirm that the purchases were for her City Vehicle rather than her husband's or another vehicle. Hammer contends that her husband fills his vehicle with his own credit card.

Hammer's documentation shows that her personal credit card charges for fuel in 2009 totaled \$550.49, \$287.42 in 2010 and \$574.76 for 2011 to date. In addition to those charges, she sought reimbursement from the City for business fuel charges incurred on her personal credit card in the following amounts: 2009 - \$170.36; 2010 - \$243.90; 2011 - none) (Exhibit C).

Hammer provided the investigator with a signed statement dated November 28, 2011, entitled "Use of City Vehicle" (Exhibit C) and a follow-up letter dated December 1, 2011 (Exhibit D, page 3, paragraphs 2 and 3). Hammer indicated that she reviewed the City-issued credit card statement each month and verified that all supporting documentation was present to support the expenses; she then initialed the yellow cover sheet. The cover sheet and supporting documentation were then forwarded to Mayor Willich to review, approve and sign. Thereafter, Hammer reported that the packet was forwarded to a Sun Valley City Council member, on a rotating basis, for approval and signature. (Exhibit C) Hammer asserts that the Mayor, Frostenson or the City Council could have questioned the appropriateness of the payments at any time, but did not do so.

Findings:

Sufficient evidence exists to support a finding that Hammer violated the City's credit card policy by using the City credit card for fuel purchases that were for personal use.

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The City maintains a written credit card policy and requires City card users to sign a Credit Card User Agreement. The City cannot locate a signed agreement for Hammer. Since per the policy the City Administrator is responsible for handling misuse complaints, it is reasonable to conclude that she is aware of her obligations when using a City card. The policy states that "City credit cards may not be used for personal purchases or personal use."

Hammer's calendar year 2010 personal credit card charges are the most compelling evidence of Hammer's misuse of the City card. Hammer admits that the City Vehicle is the only vehicle she drives. She also admits that she used the City Vehicle in 2010 for personal and business purposes, including but not limited to commuting to and from work, grocery shopping, golfing and attending other social events. Witnesses also observed her using the City Vehicle to attend football games and to go camping on her free time. Despite these admissions, Hammer's personal fuel purchases showed absolutely no 2010 personal fuel purchases for the City Vehicle for the first four and one-half months of 2010. Her first use of a personal credit card in 2010 was May 16, 2010. In the meantime, the City's detail ledger shows at least four gasoline purchases during this same time period on the City's business credit card.

Additionally, for FY 2010 (October 2010 through October 2011), no personal fuel purchases were made for the following months: October, January, March, May and July. (Exhibit C).

Other concerns include repeated references on the submitted fuel expense to "Admin CC charges" rather than designating that the fuel was for a specific business trip (Exhibit E). One reference on the supporting documentation submitted by Hammer states "I can't tell if this is the city cc or my personal cc." (Exhibit E, page 2). This was fuel purchased on Hammer's City credit card that was reimbursed to her (Exhibit E).

Multiple purchases in close time and proximity were also noted. Hammer states that the only vehicle she fueled with the City card was her City Vehicle. On Exhibit F, Hammer's City credit card reflects three fuel purchases on the City card as follows:

4/5/11 - 7:19 in Hailey (19.536 gallons)
4/6/11 - 9:51 in Hailey (10.583 gallons)
4/6/11 16:22 in Mountain Home (11.718 gallons)

No other business travel expenses for that date (e.g., hotels, food purchases out of town) are noted on her City credit card statement. The gas receipts are not Fire or EMT related, because the handwritten notation on the receipts states "Administration - credit card charges - Boise." However, personal purchases that are lined out on her personal Capital One card reflect the following personal transactions on those same dates (Exhibit C):

4/5/11 - Twin Falls (Costco and Target)
4/6/11 - Boise (Boise Co-Op)

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Based upon the above entries, Hammer's City Vehicle appears to have been fueled on the morning of April 5, 2011 in Hailey. Hammer made purchases at Costco and Target in Twin Falls on her personal credit card. The vehicle was then re-fueled in Hailey on the morning of April 6, 2011. Hammer made a personal purchase at the Boise Co-Op on that same date and then refueled in Mountain Home in the afternoon. Based upon these entries, it appears that the description for 4/5/11 and 4/6/11 supporting three fuel purchases in two days for "Boise Administration" is not accurate.

As stated in the Manual's Mission Statement, the City "relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens..." Hammer's use of the City credit card for personal fuel consumption and her failure to track personal and business use of fuel was in complete disregard of her responsibilities as a public servant. It is recommended that an external investigation and/or audit be conducted to ascertain the degree of misuse of the City card and to determine whether any violations of law have occurred.

Time Off Reporting

Frostenson asserts that Hammer has not been properly reporting vacation and sick time off thus resulting in her being wrongfully reimbursed for time off and maintaining benefit accruals to which she is not otherwise entitled.

Sick Time:

Finding: Insufficient evidence exists to support a finding that Hammer failed to report sick time off.

Hammer indicated that even while ill at home she would continue working. It also does not appear that Hammer took any extended days off for sick leave purposes other than from January 6-11. The Mayor did not object to Hammer occasionally working from home. Accordingly, insufficient evidence exists to support a finding that Hammer's use and reporting of sick leave clearly violated the City's policy. However, the time off taken from January 6-11, 2011, should be deducted from her sick leave bank.

Vacation Reporting

Frostenson asserts that Hammer has not been properly reporting vacation time off thus resulting in her being reimbursed for vacation and maintaining vacation accruals to which she is not otherwise entitled. Frostenson provides the documents set forth in Exhibit G to support Hammer's failure to accurately report time off. Frostenson states that other than emails, Hammer never formally reported vacation or sick time off on any timecard as did other department heads. The investigator has not been able to find documentation that Hammer actually formally reported and tracked her vacation on any City time record. Hammer has not produced any such documentation.

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Exhibit G, as provided by Frostenson, shows the following vacation hours reported via Hammer sending emails to Frostenson:

2008 - 40

2009 - 0

2010 - 80 (plus cashed out an additional 40 hours) = 120

2011 - 184 hours (plus cashed out an additional 40 hours) = 224

Hammer produced to the investigator a typed statement signed and dated November 28, 2011, which is entitled "Vacation, Sick and Flex Time." (Exhibit H) Hammer's position is that pursuant to Section 7(c) of her Employment Agreement, she was granted 40 hours paid vacation credited to her account at the start of employment and 160 hours per year thereafter. This issue is not disputed. As argued in her response to the Use of Vehicle discussion, Hammer asserts that the Mayor altered the terms of her vacation and sick plan pursuant to Section 10A of her Employment Agreement. Specifically, Hammer contends:

"Mayor Willich authorized me to utilize flex time to make up for work performed outside the normal 8:00 a.m. to 5:00 p.m. standard Sun Valley employee office or work hours (including a one hour lunch break) as is described in Section 3.9 of the Sun Valley Policies and Procedures." (Exhibit H)

Hammer then sets forth a detailed tracking of all hours spent working weekends, through her lunch periods (citing Policy 3.9 to support her lunch break entitlement), holidays and after the standard close of business. Hammer claims that by virtue of this approved "flex time" program, she has accrued approximately 140 days of flex time, "which was never officially accrued as part of my vacation time pursuant to my agreement with Mayor Willich." (Exhibit H). She continued, "nonetheless, the time was authorized pursuant to Section 10A" of her Employment Agreement (Exhibits A and B). Hammer "asserts that I only used approximately 19 of those 140 days I accrued during the 2008 through 2011 period. As of November 2011, I estimate that I still possess approximately 121 days of accrued flex time vacation pursuant to my agreement with Mayor Willich." (Exhibit H)

Hammer also stated that some of the time taken was authorized by the Mayor. For example, authorized time off included studying for the bar exam (64 hours in 2009) and EMT-related training such as studying for the EMT test, participating in ropes training and responding to Fire or EMT calls during the day. After setting forth her alleged accruals, Hammer sent a follow-up email to the investigator indicating that she had made an error in her calculations because she "neglected to factor in that she had been paid out for 40 hours of vacation" for 2010 and 2011. (Exhibit I)

The Mayor states that time off for bar exam preparation and Fire/EMT-related matters during the day was appropriate paid time since it inured to the benefit of the City. The Mayor had no objection to Hammer receiving continued pay during these absences without it being deducted from her vacation accruals. The Mayor confirmed that Hammer is a high performer who works long hours. With regard to a flexible schedule, the Mayor states that if an employee such as Hammer works late, he allows her to come in late the

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next day. The Mayor also had no objection to Hammer working from home on occasion, as when she is ill. However, the Mayor states that at no time did he approve any program deemed "flex time" or comp time for Hammer. When advised what Hammer was contending pertaining to "flex time" being tracked and used instead of vacation, the Mayor responded that he was "totally unaware of that" and did not authorize it.

Finding: Sufficient evidence exists to support a finding that Hammer failed to properly report vacation time taken. Her conduct is in violation of timekeeping requirements and is tantamount to falsification of timecards (Policy 8.4 (17)). Failure to report vacation taken resulted in Hammer receiving cashed out vacation payments to which she was not entitled. An independent outside audit and investigation should be immediately conducted to determine the extent of the falsification.

Hammer's accrual rates were set initially in her Employment Agreement at 40 hours up front vacation and 160 hours annually thereafter. Hammer's argument pertaining to contractual modification of the terms of her vacation benefit is rejected for the same reason discussed under "Use of Vehicle" set forth previously in this report. Additionally, Hammer's Employment Agreement specifically states that "vacation accrual and use shall follow the procedures set forth in the Personnel Manual." (Exhibit A) As with other City workers, Hammer is responsible for adhering to the Policies set forth in the Manual.

Employees are granted a salary and benefits, which encompasses their compensation packages. They are not authorized to make their own rules. Hammer, as the City Administrator is responsible for enforcing the City Manual. She is fully aware that she is an exempt salaried employee, as indicated in Policy 4.5. She is paid for the job without regard to the number of hours worked. Policy 4.8 (B) clearly states that "exempt employees will work more than 2080 hours per year" and that they may "have variations in the hours worked from week to week to do so." Hammer should also be aware that under Idaho law and the manual, she is not entitled to a lunch break. More importantly, Ms. Hammer is neither entitled to overtime for all hours worked over forty per week (Policy 4.8 (B)), nor is she entitled or even eligible for a compensatory or "flex" time off program as described by Hammer. (Policy 4.8).

Hammer's attempt to claim some sort of compensatory time off (referred by her as "flex time") either reveals a complete lack of understanding of wage and hour laws or an abuse of her power as City Administrator. Based upon the evidence presented, it appears to clearly fall under the latter. Additionally, regardless of her claim that she is entitled to a flex time program, Mayor Willich denies entering into such an agreement with Hammer or granting her such authorization. Even if he had, arguably he would not have had legal authority to grant such a program as applied to Hammer.

In considering whether a violation occurred, the investigator disregarded time off taken by Hammer to engage in bar examination studies, EMT training and testing, as these were approved by the Mayor and inured to the benefit of the City. Turning to other time off taken, Hammer has made it difficult to account for her time off due to her failure to o

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complete timecards tracking vacation time off taken. Other department heads do so, and it appears highly suspicious that Hammer did not. Hammer provided the investigator with an after-the-fact recap of her vacation time used, which further demonstrates that she blatantly failed to track and/or accurately report vacation time as it was used each year (Exhibit D).

Based upon documentation presented by Frostenson (via emails received from Hammer referencing time off as compared to payroll documents) as well as Hammer's written statements, sufficient evidence exists to support a finding that, at a minimum, the following time off was taken as vacation and not reported:

- 2008: Hammer earned 40 hours of vacation time and properly reported 40 hours of vacation time. This left a zero balance going into 2009.
- 2009: Hammer earned 160 hours of vacation time for calendar year 2009. Frostenson's records support a finding that Hammer did not report any used vacation for 2009. Records provided by Frostenson indicate that with the most conservative interpretation of this data, at least 96 hours were taken by Hammer as unreported vacation in 2009, as evidenced in Exhibit G. These include 4/17/09, 5/15/09-5/22/09, 6/8/09 and 9/28/09-10/01/09. Additionally, Hammer expressly admits in her written supplemental statement that time off she took from 5/14-5/18 was for "mother-in-law funeral" and further admits not counting this time against her vacation bank (Exhibit D). The City's Manual does not include a paid bereavement leave benefit for this purpose. Family Medical Leave does not cover this type of absence either. Therefore, this time should have been reported as vacation. Additionally, Hammer admits to taking an additional 48 hours (1/25-1/26, 4/30-5/3 and 11/19/22) for vacation in 2009 for which there appears to be no reporting of vacation time used (Exhibit D). In sum, there appears to have been at least 144 hours of vacation taken in 2009 by Hammer without any hours being deducted from her vacation bank. This would leave Hammer with two days of unused vacation time in her bank going into 2010.
- 2010 - Hammer earned 160 hours for 2010, plus carried over 16 hours from 2009 (using conservative vacation reporting numbers to give Hammer the benefit of the doubt). Frostenson's documentation shows that Hammer informally reported, via email to Frostenson, 80 hours of vacation in 2010, which were deducted from Hammer's vacation accruals (Exhibit G). Hammer admits in Exhibit D that she actually took 160 hours of vacation in 2010. Rather than reporting those extra hours, Hammer cashed out 40 hours of "unused" vacation on November 21, 2010. She had no authority to cash out this amount, because she had not reported any time off in 2009. Policy 5.2 C(3) provides for cash outs only if the employee has used an equal amount of vacation leave in the previous 12 month period. Hammer had not reported any used vacation in 2009. Furthermore, and more importantly, Hammer was not authorized to receive a 40 hours cash out of vacation on November 21, 2010, because she did not have that much actual vacation to cash out. The maximum cash out taking all of Hammer's numbers as true would have been 16 (the two carried over days from 2009). The result was that Hammer

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received a cash out for 24 hours of compensation of which she was not entitled.

- 2011 - Hammer earned 160 hours of vacation at the start of 2011. Frostenson's documentation supports that only 184 hours were claimed as vacation through payroll (Exhibit G). Hammer admits actually taking 248 hours of vacation to date in 2011 (Exhibit D, 31 days x 8 hrs/day). Additionally, Hammer received a cash out payment for 40 hours of alleged unused vacation on April 24, 2011. This brings the total to 288 hours of vacation either cashed out or taken as paid time off for 2011. For the calendar year 2011 to date, reports indicate that Hammer has received compensation for at least 128 hours of unearned vacation benefits, through either cashed out vacation or continued pay.

Sabbatical:

Hammer contends that her May 2011 vacation should have been credited to her earned Sabbatical time off. Hammer claims that on or about May 10, 2011, she "informed Frostenson that she was going to take an extended vacation of 23 days, including using 15 days of sabbatical vacation" which Frostenson did not record. (Exhibit H) Frostenson denies that Hammer ever advised her that she should apply sabbatical time to the May 2011 vacation. The email documentation supports Frostenson's position that the time off request was for vacation rather than a sabbatical. Additionally, Frostenson states that even if Hammer had requested that the time off be recorded as Sabbatical leave, Hammer was not yet eligible for her sabbatical time while she was on the May vacation, because she had not reached her three-year anniversary. Frostenson further indicates that sabbatical time off has never been placed into vacation accruals in the system. Sabbatical is tracked separately and only on employee request. When utilized, it must be taken in one lump sum and is paid out as straight salary and not coded as vacation.

Policy 5.3 states that sabbaticals are earned after completion of the first three years of employment. Hammer places her own actual employment start date as June 23, 2008 (Exhibit I, handwritten note under "Sabbatical"). The vacation in question ran from May 9, 2011 to June 9, 2011. Therefore, she was not eligible for a sabbatical leave for this time off. Second, Policy 5.3 requires the employee to schedule the sabbatical dates "in consultation and with the approval of the Supervisor" which would be the Mayor in Hammer's case. Therefore, any notification or email to Frostenson would have no impact unless authorized by the Mayor. Finally, sabbaticals must be taken as a single block of 15 days, which has not occurred since Hammer became eligible for this benefit. Hammer is eligible for a 15-day Sabbatical, which must be taken within one year from being earned. However, this is a separate issue from vacation time off and is not treated like vacation from a cash out or reporting standpoint.

In sum, clear violations of the Manual occurred due to false reporting and failure to accurately report vacation usage. Vacation time off must be accurately reported by City employees in order to ensure that there is no financial impropriety or abuse of public

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funds. At a minimum, Hammer violated City policy; legal implications should be pursued through audit and outside agency investigation.

Taped Recorded Conversation with Officer Morris Regarding Executive Session

On November 11, 2011, the City Council engaged in an Executive Session to discuss Frostenson's concerns relating to Hammer. Hammer admits that she was aware that this was an Executive Session. Executive Sessions are confidential and not open to the public.

Hammer provided a signed statement to the investigator dated November 28, 2011, which is entitled "November 10-11, 2011" and attached as Exhibit J. This statement confirms that Hammer was aware that the City Council intended to hold an Executive Session on November 11, 2011, for the purpose of "hiring, firing and disciplining an employee." (Exhibit J) Although the Executive Session was scheduled for 2 p.m. on a holiday closure, Hammer states that she was working in the office at that time. Hammer admits meeting Officer Connie Morris "around the Police chief's office door" and hearing Mayor Willich and Councilman Nils Ribi ("Ribi") talking. Hammer states that a garbage truck pulled up outside after 45 seconds and then she left this area of the building. At this point she believed the meeting was about her since Frostenson was in attendance.

Hammer and Morris both state that they went on a ride in the police car, because Hammer was upset. When they returned to her office, Hammer states that she obtained tea three times in a location outside the Council Chamber front door. Hammer admits hearing some substantive conversation from the meeting. She admits that she "stood by the door for approximately 30 seconds to 1 minute brewing tea" and returned to get hot water "two more times" standing there "for no more than one minute each time." Each time she admits hearing voices in the Chamber, but states she "could not make out much of what was being discussed." (Exhibit J).

Morris claims she overheard some portions of the Executive Session by virtue of working at and around her work station. Morris states that she was under the impression that Council meetings are open to the public and thus not confidential. Both Morris and Hammer deny any intentional eavesdropping.

With regard to the recorded voicemail submitted to the City by City Clerk, Kelly Ek ("Ek"), both Hammer and Morris verify that they are the parties to the conversations. Both deny any wrongdoing by virtue of the conversation. The voicemail is in the possession of the investigator and the City.

City Police Chief Cameron Daggett, 1986 to present, has listened to the Recording and believes there was no wrongdoing evidenced on the Recording.

Finding:

Insufficient evidence exists to support a finding that Morris or Hammer improperly eavesdropped on the Council's Executive Session. It appears that they heard the

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discussions from areas of the building open to the public. Conversations lose the protection of confidentiality when the speaker has the discussion in a place where others have the right to be and talks loudly enough for the conversation to be overheard. This appears to have happened here. The Council, although in an Executive Session i.e., closed to the public, discussed the matter loudly enough to be heard outside the room. Morris and Hammer lingered in areas where they had the right to be at the time.

Although not a technical breach, it is clear that Hammer violated the spirit of the concept of the Executive Session by lingering in the hall to listen and in having Morris relay the information she heard from the closed session. Additionally, sufficient evidence exists to support a finding that Hammer abused her position of authority by riding in a police car with Officer Morris to discuss the Executive Session contents and later questioning this subordinate staff member to extract the confidential content of an Executive Session. This line of inquiry, which was evidenced in the recording provided by Ek, is inconsistent with the "moral sense of stewardship" set forth in the City's Mission Statement. The conduct was clearly unbecoming of a City Administrator and was thus improper.

Unauthorized Bonus Granted to Ray Franco

Ray Franco ("Franco") Assistant Fire Chief for the last three years, was granted the following bonuses and/or raises:

03/06/09 - FY 09 pay adjustment of step increase from 7 to 8 (3.78%); bonus of \$750.00
10/01/09 - FY 10 pay adjustment of 2.1%
10/01/10- FY 10 2% COLA (cost of living adjustment); additional bonus of \$2,000
(Exhibit K)

The 2009 increases were authorized by signatures of the Mayor, City Administrator and Finance Director. The October, 1, 2010, COLA is covered in two documents. The first states in handwriting "FY 11" and is authorized by the Mayor and City Administrator only. The second lists the 2% COLA plus the \$2,000 bonus, authorized by the Mayor and City Administrator. (Exhibit K)

Franco states that Hammer informed him that she was providing him with the \$2,000 bonus and instructed him not to tell anyone about its issuance. In his interpretation, this included Fire Chief Jeff Carnes. Carnes and Franco never discussed the bonus. With regard to the 2009 bonus, Franco states that Hammer did not give him the same instruction regarding non-disclosure. Franco states that 2009 bonuses were given to "everyone." Since this issue arose after Hammer's initial interview, she has not yet been re-interviewed on this point.

Finding:

Insufficient evidence exists to support a finding that the bonus payout was in violation of City policy.

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The Mayor signed off on the bonus issuance, and the bonus payout was properly documented in the file. Employers should not instruct employees not to disclose wages as this is protected concerted activity. However, no adverse action was threatened against Franco if he opted to disclose the bonus. The City Administrator appeared within her authority to issue the bonus, as long as it was approved by the Mayor. No policies were provided by the City to contradict this authority.

Another issue raised by Frostenson was whether Hammer inappropriately altered documentation submitted concerning Franco's work on BLM fires. Based upon witness statements, there appears to be great confusion on the billing and tracking process for BLM work. There was also scant documentation provided to provide guidance on this issue. Accordingly, insufficient evidence was presented to make a determination on this issue.

Conflict of Interest with Eric Adams

Concerns were raised whether Hammer was engaged in a relationship with City Building Inspector Eric Adams ("Adams") resulting in Adams being provided preferential treatment in compensation and obtaining workforce housing. No evidence was provided by any witness to support a finding that a romantic relationship existed at any time between Hammer and Adams. Evidence was provided to support a social friendship between Adams and Hammer. Witnesses referenced that Adam and Hammer were friends whom socialized outside the office. One witness showed the investigator photographs which depicted persons identified to be Adams and Hammer fishing together.

Adam's personnel file reflects that on June 6, 2011, Hammer and the Mayor approved a \$5,000 adjustment to "make his salary more comparable with other Department heads and reflect qualify of work by employee." (Exhibit L) On October 1, 2011, Hammer and the Mayor authorized a 2% cost of living adjustment. On that Personnel Action Form, it was noted "\$5,000 salary adjustment in June 2011)." While it appears that there is no new salary adjustment being granted in October of 2011, Adam's compensation was adjusted upward by another \$5,000 increment.

As to workforce housing, Mal Prior claims that Adams has received preferential treatment in obtaining City-owned housing. The City bought two condominiums and then granted Adams one slot even though he already owns property. He also claims that the City lowered the rent on Adam's City housing.

Finding:

Evidence existed to support a finding that the October 2011 bonus may have been made in error. If not, the Personnel Action Form supporting the bonus should be clarified to approve this bonus payout.

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Insufficient evidence exists to support a finding that a romantic relationship existed between Adam and Hammer that created a conflict of interest. Of note, however, is the fact that Hammer exposed herself to allegations of preferential treatment by engaging in social relationships with a person over whom she controlled compensation and other personnel decisions. While it is acknowledged that the City is a small town and the social circle may not be large, it is imperative for a City Administrator to strictly comply with Policy 7.3, which expressly prohibits City employees from engaging in any activities which could represent a conflict of interest with their City employment.

Workforce housing guidelines were not adequately outlined or provided so that the investigator could have a basis upon which to evaluate this issue. It is recommended that the City establish strict policies for eligibility requirements for determining placement into City-owned housing to avoid any appearance of favoritism or impropriety.

Preliminary Investigation of Fire Department

While conducting the investigation on the above-referenced issues, Councilman Ribi received the text message attached as Exhibit M from Mal Prior ("Prior"), Captain of the City's Fire Department ("Department"). Ribi immediately sent the text message to the investigator. Prior was contacted and reluctantly agreed to meet for an interview on November 30, 2011. A follow-up telephonic interview was conducted on December 6, 2011 with Prior. Additionally, a telephonic interview was conducted with Assistant Fire Chief, Ray Franco ("Franco"), on December 6, 2011 immediately after he returned from vacation. Issues raised:

Issue #1 - Falsification of Fire Department Time Cards - Nick Carnes' Timecards

Mal Prior Interview: Prior has been with the Department for 15 years, and has served as Captain for the last 4-5 years. Prior asserts that there is falsification of Nick Carnes' time cards taking place within the Department. Prior states that he has witnessed Tina Carnes falsify timecards within the Department for her son, Nick Carnes. He is aware on one occasion where up to 79 hours of time not worked was put into Nick's time report by Tina

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Carnes. He cites Eric Adams, Ray Franco and Reed Black as other witnesses. Prior states that Nick Carnes does not always fill out a time card. Tina Carnes fills out Nick Carnes timecard "a lot" as witnessed by Prior. Prior asserts that time reflected on Nick Carnes' timecard is not actual time worked. He notes that Nick Carnes works full-time at Kelly Automotive as further evidence that the hours reported cannot be actual (Note: He also recommends reviewing all Kelly Automotive accounts as there may be charges to the City from Kelly Automotive for services such as oil changes that did not actually take place).

Prior states that he prepares the Fire and EMS report. He sees payroll files and what is submitted. The records submitted are not an accurate account of time actually worked. He cites that he has known about the misconduct for two years, but did not report it to the Fire Chief, Jeff Carnes ("Chief"), because he would lose his job.

Prior states that he reported his concerns to Hammer "a couple of times." He specifically met with her to discuss his concerns in the Summer of 2011 at Perry's. Prior indicated that he reported to Hammer that Nick Carnes' timecards were being falsified within the Fire Department. No changes were observed to address these issues. In Prior's opinion, Hammer "listened and didn't do anything." He states, "She was supposed to do something about it." There was no investigation to his knowledge, and the conduct continued. Hammer did not tell him she would look into it, and she never got back to him regarding these concerns. He also advised Hammer that there was "a lot of shady stuff that goes on" at the Department and referenced misuse of city credit cards and the volunteer firefighter funds. The only change was that she took over as treasurer of the volunteer funds. Prior states that everyone is intimidated by the Chief. He has been there for 38 years, and the Chief is "very good" with the city council and mayor." Prior states that recently the Chief made a general statement to him that this is not the first time someone has "gone after" him, and the Chief referenced Jeff Nivens. Prior stated, "we all know what is going on, and we don't want to be part of it." He also stated, "We all went to Sharon Hammer and told her."

Ray Franco Interview: Franco has been the Assistant Fire Chief for three years. Prior to this position he served as the Department's Captain for twenty years. Several years ago Franco was responsible for processing timecards. Nick Carnes was and still is consistently reporting more time on his timecards than he actually worked. In November or December of 2008, Franco was preparing timecards for payroll submission when he saw that Nick Carnes had reported 240 hours for one month. Franco states that Nick Carnes did not work those hours. Franco states that no one puts in more hours than Franco and he works 160 hours per month. Franco refused to approve it; the Chief approved the time.

Franco states that there were "quite a few times" that he refused to sign timecards do to falsified timecards from Nick Carnes. He does not believe other workers are falsifying timecards. In approximately January 2009, Franco was advised that Tina Carnes would be taking over the timecard processing. Basically, he feels that the responsibility was taken away from him. Franco believes that it is a conflict of interest for Tina Carnes to be preparing timecards for her son and then having her husband approve them.

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Franco states that Nick Carnes and Tina Carnes are consistently reporting more time than is actually being worked by Nick Carnes. He notes that Nick Carnes has a full-time job at Ketchum. Franco also states that Tina Carnes fills out Nick's timecards.

Franco states that there is a fear of people losing their jobs if they say anything. Franco indicated that he is "terrified" about losing his job. Franco once told the Chief that if the City Council asks him to bring this to his attention he would have to tell the truth. Franco believes that the Chief does not care. Franco states that the Chief knows that the timecards are being falsified by Tina, and he signs off on them. Franco does not understand why the timecards and records for the Department have not been audited. He states that even if a review goes back a year, it will find hours reported when the employee was not even there (at the City job).

Franco took some concerns to the City Administrator Hammer a few times in 2010 "hoping someone would catch it and look at it." One concern he raised to Hammer was that Nick Carnes was granted use of the Chief's City credit card. Nothing triggered an investigation or audit from Hammer to his knowledge.

Michelle Frostenson Interview - Frostenson states that she has no authority to review Department timecards and supporting timecard documentation. These are maintained at the Fire Department. Tina Carnes, wife of the Chief and mother of firefighter Nick Carnes is responsible for preparing the Department's payroll numbers and submitting those totals to Frostenson. Frostenson in turn directs payment on these amounts without any variance to the numbers reported. Frostenson states that she had no ability to question the reporting chain or payroll numbers reported by Tina Carnes. Frostenson was not granted access to the supporting timecards. Frostenson asserts that during the last City audit, approximately November 2010, she requested authority from Hammer to obtain access to the Department timecards and records. Hammer denied her request. Accordingly, the Department records were not a subject of last year's audit.

A sample of a Department Payroll document provided each payroll period is attached as Exhibit N (2010 sample attached). In most instances, it bears the approval and initials of the Chief. Actual payroll ledgers are then initialed by Hammer for approval (Exhibit N, 2011 sample attached). A random review of the general payroll ledger reflects that Department staff members are paid the hours reported in the Department Payroll submitted by Tina Carnes. Frostenson states that all hours reported by Tina Carnes via the Department Payroll summary are paid out to each employee. That is the controlling document from which she pays Department staff. Frostenson provided several examples to the investigator wherein the general ledger reflected payroll checks issued for the amounts reported by Tina Carnes in her Department Payroll Report.

The Mayor advised the investigator that Tina Carnes claimed that the hours tracked by the Department were not actually hours paid to firefighters. No evidence supports this claim, and due to the potential legal implications of the alleged conduct, none of the Carnes family members were interviewed. Frostenson further indicated that

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Administrator Hammer initials and approves all final payroll documentation, including hours paid out to Department staff.

As to Nick Carnes, Frostenson states that Nick Carnes reported so many hours worked in approximately 2009 and 2010 that the City was required to pay PERSI contributions of \$3743. In 2009, Frostenson believed that Nick Carnes could not actually be working all the hours he reported. She took her concerns to Hammer. Hammer's response was that she saw Nick Carnes on site a lot and that she "hoped" what Frostenson was presenting to her "was not true." For a period of one year, Frostenson claims to have reported her concerns to Hammer regarding Nick Carnes' hours and the PERSI issue. Hammer was non-responsive to her and told her to talk to the Chief. Frostenson stated that she has emails to Chief and Hammer on this issue, but she currently did not have access to her emails while on administrative leave. She also recalls talking to the Chief directly about her concerns. He was not rude to her, but no solution was provided to her. Frostenson also claims that in approximately 2011, Hammer told Frostenson that there were people in the Department who had made accusation to her about the Fire Department. Hammer did not provide her with names or content.

Timecard Documentation:

The investigator was provided with timecard files from the Department for what appears to be 2009 through current. Since approximately 2009, Tina Carnes has been responsible for Department payroll, including submitting the total payroll time to be paid to the City Treasurer. The timecards are difficult to assess since the files were received in disarray. Most of the records and timecards are missing years and signatures. A review of the timecards shows a complete lack of procedure, accuracy or responsible recordkeeping. Many files were disorganized to the point of containing loose timecards with no year, no signatures by employees or supervisors and no logical framework to support the time recorded.

Below are a few time records the investigator reviewed and analyzed pertaining to Nick Carnes:

Nick Carnes:

January 2009 (Exhibit O)

Handwritten time record (no official timecard) supports 107.5 hours worked despite attached calculator tape reflecting 103 hours. Payroll Department form reported 164 hours worked by Nick Carnes.

July 2009 (Exhibit P)

Nick Carnes' timecard reports 17 hours for Hydrants and 66 hours for "other." Payroll Report to Finance Director reports 106 Fire hours and 17 Hydrant.

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October 2010 (Exhibit Q)

Handwritten itemized worksheet reflects 53 hours. Actual timecard reports 68 hours. Entries from worksheet are altered when added to timecard. For example, 10/25 same description, "clean chief office" is changed from 4.0 to 6.5 hours. "Clean T3/shirt order" is changed from 5.0 to 5.5. The timecard is missing employee and supervisor signature. An accompanying handwritten payroll chart for same period shows no total hours worked for N. Carnes, but shows 10 hours in column (10/14 - 1 hr.; 10/24 - 2 hrs.; 11/6 - 1 hr.; 11/5-11/06 - 6 hrs). The first two entries (1-/14 and 10/24) are not reflected in the timecard. The 11/5-11/6 entries are reflected as a total of 15 hours in the timecard as compared to the 7 total hours reflected on the log. Payroll Report to Finance Director cites Nick Carnes as working 68 hours.

November 2010 (Exhibit R)

Time card records Fire - 47; Snow removal - 13. Payroll Report to Finance Director reports 62 Fire hours and 13 Snow Removal. Handwritten log does not match timecard. Timecard unsigned by employee and supervisor.

February 2011 2/14 through 3/13 (Exhibit S)

Handwriting appears different than prior Nick Carne timecards. Timecard is unsigned. Timecard total reported is 31 hours. Payroll Report to Finance Director for payment reports 47 hours.

March 2011 3/15-4/10 (Exhibit T)

Unsigned Nick Carnes' timecard reported 33 hours. Payroll Report cites 41 hours.

April 11 through May 9 2011 (Exhibit U)

No timecard submitted by Nick Carnes, but Payroll Report reported 20 hours to Finance Director for payment

June 2011 (Exhibit V)

Unsigned Nick Carnes' timecard total is 32 hours. Payroll report submitted for payment totals 65 hours.

July 2011 (Exhibit W)

Unsigned Nick Carnes timecard in different handwriting. Total of 65 hours reported on timecard. Payroll report 78 hours.

Note: While reviewing timecards, there appeared inconsistencies among other payroll hours reported by T. Carnes to the City Treasurer. While not as significant as those

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reported for Carnes and Prior, all timecards and records for each Department employee should be reviewed and independently audited to ensure that hours were accurately reported and paid.

Issue #2 - Falsification of Payroll Reports - Underreporting Mel Prior's Actual Time Worked

Frostenson states that on-call firefighters do not receive PERSI because they are considered part-time employees with no benefits. They are required to be paid for all hours worked, including meetings, drills, calls, training time and general work performed on behalf of the City. Frostenson states that at the end of July 2011, she had a discussion with the Chief and Hammer about Prior's hours. He had worked 36 hours of City time to prepare for a BLM fire and Frostenson advised them that she cannot obtain reimbursement from BLM for those hours. Frostenson states that she told Hammer and Chief that they must pay Prior for those worked hours. She also cautioned them that if he is working off the clock and gets injured, there could be a workers' compensation issue. Frostenson pointed to Exhibit X to demonstrate that Prior was not paid for those hours that were discussed with the Chief and Hammer. The timecard for July 2011 reflects 77 reported hours by Prior. Tina Carnes only reported 40 hours for the period to the Finance Director for payment. The paycheck issued to Prior for this period only covered 40 hours of reported work (Exhibit X)

Prior states that he is not paid for all hours he actually works. He is only allowed to be paid a maximum of 79 hours per month. If he works 80 or more hours a month or twenty or more per week he would have to receive benefits, including PERSI. He believes that under state law employees who work more than 20 hours per week must be provided benefits. He states that he only gets paid for four hours per day, five days per week. Unlike other workers, he does not get paid for additional time worked such as going on calls. Frostenson told him he could only work 79 hours. Tina Carnes and the Chief also have told him that he cannot work more than 79 hours; however, the Chief lets him do so. For example, during the week of November 28-December 4, 2011, Prior covered as backup Chief since Franco is on vacation. He will not be paid for this time even though he will be covering and attending a meeting. If Prior complains, he will not receive his 79 hours so he does not complain. He states that Mayor, Councilman Ribb, Frostenson, Hammer and the Chief know he is working more hours. Hammer also knows because she sees him working.

Upon request for the amount of hours worked but not paid, Prior submitted the following totals via an email dated December 13, 2011 (Exhibit GG):

2009 184 unpaid hours
2010 563 unpaid hours
2011 582 unpaid to date

In Prior's email, he wrote, "I also have an email from Fire Chief thanking me for working and not getting paid except for calls. Sharon Hammer responded to email." (Exhibit GG)

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The referenced emails are included as Exhibit HH and are dated June 28 and June 29, 2011.

Franco states that "Mal Prior is the one getting the shaft." Franco reports that Prior is working off the clock. Or, in some instances Tina will take Prior's reported hours and will reduce them before she turns them in for payroll. Franco states that "you can't cheat people out if they work." Franco states that "they don't want to pay his (Prior's) PERSI." Franco states that talking to the Chief about it "does no good."

Time Records for Mal Prior:

A few payroll cycles were reviewed for Prior. See below summary:

November 2010 (Exhibit Y)

Prior submitted a signed two-page timecard reporting 83 hours Fire and 4 hours Street labor. Payroll submitted to Finance Director only reflects 75 hours Fire and 4 Street.

December 2010 (Exhibit Z)

Prior submitted signed two-page timecard (no supervisor signature); 85 hours Fire and 10 hours Snow reported; Payroll to Finance Director reported 10 Street and only 68 Fire.

February 14, 2011 through March 13, 2011 (Exhibit AA)

Signed timecard reflects 82 hours actually worked when count each entry; total appears to be 82 and then crossed out and changed to 69 hours. Payroll reported 78 hours to CT

July 2011 (Exhibit X)

Prior's signed timecard reports 77 hours worked; Payroll reports only 40 hours worked. Paycheck 45868 shows only 40 hours paid to Prior.

Issue #3 - Misuse of Chief Carnes' City-Issued Gasoline Credit Cards

Mal Prior asserts that the City's gasoline credit cards are misused; specifically, the Chief and Nick Carnes are filling up their private vehicles with the City gasoline card. Prior states that he advised Hammer of this concern in the Summer of 2011. Hammer "just listened, but didn't do anything because it is still going on."

Franco states that there is a Brico/United Oil gas card for each of three City Department vehicles - the Chief's car, Franco's car and pickup truck. The cards are left in the vehicles. Franco states that it is clearly understood that no one is authorized to fill up personal cars using the City gas cards. Franco asserts that Nick Carnes has filled up his personal vehicle with City gas card. Although he has not witnessed it, Franco's review of the bills

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has caused him to conclude there is misuse by the Carnes'. Franco has kept a calendar when he suspects personal use. Franco is willing to produce all documentation, including the calendar. He states that Nick Carnes drives a Chevrolet white pickup truck and fills up in Ketchum at Brico. Franco is unsure whether Brico has surveillance videos.

Franco states that the Chief knows about this, and the Chief looks at the bills. When Franco thinks the bills are excessive, Franco does not sign them. Franco "does not want any part of that." Franco states that the gasoline bills will show red flags because multiple fill-ups occur within 7 minutes. Franco states that the gas cards also indicate what alleged City vehicle is being filled. Franco receives documentation via email regarding the gas bills, and he has maintained copies of them. He will provide all documentation supporting misappropriation of City funds. He does not have many documents in his actual possession.

Credit Card Statements: The investigator did not have possession of the City's gasoline credit cards.

Issue #4 - Misuse of Carnes' City Credit Card

Franco states that any privilege Nick Carnes wants he is given. "He has carte blanche." Franco states that he has reviewed bills and is aware that Nick Carnes uses the Chief's City credit card to purchase personal items. Franco reported his concerns to Hammer a few times in 2010. He asked her why "a certain person is able to use credit cards a couple of times; went on backcountry training in Stanley and Nick had the credit card there and the card was in his hands and others didn't get to use it but he did." Dates unknown. Franco claims that Nick Carnes has made local charges for food on the Chief's City card as well. To his knowledge, Nick is not an authorized user of the card. Franco states that Hammer told him that she would look into it. However, she never got back to Franco and nothing changed. Franco concluded that she was not looking into it or doing anything about it. Franco states that he went two or three times to Hammer to try to make her aware of his credit card misuse concerns.

Franco states that Nick Carnes has purchased items that are not business related. Franco is aware of a helmet for \$400 that no other Department employee received; the other workers use hand-me-downs. Nick Carnes does not keep the helmet at the Department; everyone else uses equipment that is at the station. Franco was not present when Nick Carnes purchased the helmet, but heard Nick talking about it and saw it when Nick received it. Franco states that the Carnes do not hide their use of the City card; they openly use it for personal purchases. Recently, the Carnes spent \$2500 on Nick Carnes's snowmobile - "better boards, exhaust pipe, clutch" using the Chief's City card. Nick replaces climbing boots a lot. The firefighters get only one pair and a suit for the backcountry teams, but Nick Carnes goes through boots that he purchases on the Chief's City card. Franco also states that Nick Carnes' personal snowmobile is allegedly "rented back" by Nick to the City. Franco stated that most recently he believes Chief or Nick purchased Green Monster shoes on-line for personal use.

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Mal Prior claims that the Carnes family uses the Chief's City-issued credit card as their own. He states that "Nick buys stuff all the time" on the City card and has the number memorized. Prior has witnessed Nick Carnes purchasing items on-line with the City card. Prior does not know if what he is purchasing is appropriate, but it does not seem right to him that Nick Carnes is using the card. A few months ago, Franco told him that Nick Carnes was no longer allowed to use the Chief's credit card. However, Prior feels that Nick Carnes is still using it. Nick Carnes gave the Chief's City credit card number over the phone when purchasing a \$400 snowmobile helmet. He stated that helmets are not clearly a personal item, but Nick Carnes does not leave his helmet at the Department. Also, Nick Carnes being the only one to get a \$400 helmet is "weird."

Prior reported to Hammer this past summer that the Carnes' were possibly misusing the City credit card. To his knowledge, no action was taken by Hammer, because Nick Carnes continued to use the card after his meeting with Hammer.

Credit Card Statements: The investigator had possession of FY 2010 credit cards. Attached as Exhibit BB is the Chief's credit card statement and receipt for purchase of a \$399.99 helmet. No signature is on the receipt since it was an on-line purchase. Exhibit CC sets forth a credit card purchase at Zappos.com that was unsupported by a receipt. City employee, Tammi Hall, had to request repayment of the amount. Tina Carnes indicated to Hall via email that Jeff had accidentally made a personal purchase of shoes on the card. Payment was promised, but the investigator does not have a confirmation of repayment at this time. Other credit card receipts do not contain the signature portion and/or are on-line or non-signature-required purchases. Witnesses will need to review and confirm which charges are for non-business purchases.

Issue #5 - Missing City Property

Prior states that the City owned a motorcycle and it suddenly disappeared in the Winter of 2010. He believes the Carnes family may have used it as a trade-in at Rexburg Motor Sports to purchase a personal snowmobile. Franco also states that a Department motorcycle disappeared and a Carnes' personal snowmobile was purchased at Rexburg Motor Sports. "Everyone thought they did that" (referring to misappropriating City property to purchase a personal snowmobile).

Issue #6 - Misappropriation of Volunteer Firefighter Association Funds

Franco states that the Ketchum/Sun Valley Volunteer Firefighter Association is separate from the City. This was confirmed by Frostenson, who has no financial access or duties with regard to this Association. Franco states that it has its own federal and state identification number, Ketchum/SV Volunteer Firefighter Association. Franco states that the Association "got in trouble last year" with IRS. It is run by volunteer officers, and Hammer is now the Treasurer.

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Prior contends that Costco purchases made from the Volunteer Firefighter Association funds are diverted to the Carnes' household. Prior complained this past summer to Hammer about his belief that the Volunteer Firefighter Funds were being mishandled. He cited improper use and lack of control of the funds. He is unaware of any investigation taking place, but Hammer's solution was that she became Treasure of the Volunteer Firefighter Association and took over the account.

Franco stated that there had been food purchases diverted to the Carnes household from that fund. City firefighter Todd Taan Robrahn reported to Franco that on two occasions in the Summer of 2010, he witnessed Nick Carnes take Association purchases from CostCo and divert them to his house. Todd witnessed Nick actually stop at Nick's house and drop food off that he did not buy separately (bought with the volunteer foundation money).

Franco said that the Association shut the Costco card down. Franco states that he "sees very much wrong with" this conduct. Hammer was aware of what transpired, and she took over approximately nine months ago as Treasurer to make spreadsheet and balance items. Franco states that Hammer was aware as City Administrator what Nick Carnes was doing. She did nothing about his reported actions even though he is a City employee.

Franco also stated that Nick Carnes would have been hired by the Chief. Staff members have expressed concerns about the Carnes being related and have complained to each other about the special privileges granted by the Chief to his son.

Issue #7 - Sharon Hammer's Failure to Submit Fire Department Timecards:

Sharon Hammer was included in the Fire Department's payroll reporting without submitting timecards to support any hours actually worked. See below hours reported by Fire Department Payroll to Finance Director for 2010 FY, which were paid to Hammer in addition to her City salary:

October 2010 - 10 hours, no timecard
November 2010 - 9.5 no time card
December 2010 - 6.0 no timecard
January 2011 - 4.0 no timecard
Feb 2011 - 7.0 no timecard
March 2011 - 4.0 hours no timecard
April 2011 - 6 hours, no timecard
May 2011 - 0
June 2011 - 0
July 2011 - 3 hours, no timecard
August 2011 - 2 hours, no timecard
September 2011 - 6 hours, no timecard
October 2011 - 14 hours, no timecard
November 2011 - 10 hours, no timecard

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Issue #8 - Potential Double Payments Received by Hammer and Hoffman

Both Mark Hoffman ("Hoffman") and Hammer are full-time exempt salaried City employees. In addition, they serve as paid on-call firefighters/EMTs. At issue is whether Hammer or Hoffman submitted and received multiple payments from the City for work performed within the same work day. Even though the investigator did not locate a policy addressing this issue, it appears that City employees are not allowed to obtain double compensation for the same hours worked. At least two witnesses, Frostenson and Hoffman, confirmed this understanding.

This issue is difficult to assess since Hammer did not prepare Department timecards (see Issue #7 in preceding paragraph) despite receiving extra compensation for Fire Department labor that was in addition to her City Administrator salary. Additionally, it is difficult to ascertain whether Department time worked was on evenings and weekends (for which extra compensation would be allowed) or during the work day (where double payment would not be allowed other than if the employee used paid vacation time from the City). Hoffman submitted time cards, but many are missing or inaccurate and do not reflect specific time periods worked (e.g., 8:00 a.m. - 3 p.m.). Hoffman also received additional Department compensation in addition to his City salary. Additionally, since Department timecards have not been provided to the City Treasurer in the past, the City Treasurer was precluded from verifying whether double payments were issued. A full audit is necessary to cross-check Department records against City payroll.

In the investigator's presence, Frostenson did a brief comparison of Department timecards to payroll summaries. One example note by Frostenson was as follows:

- Hammer took time off from her City Administrator position from June 7, 2010 through June 11, 2010 for ropes training with Mark Hoffman. (Exhibit G). Mark Hoffman recorded 9.5 hours for this purpose, while Hammer took the entire week off. No vacation time (coded as 4-01) was taken from her City salary for this purpose, and she received her City salary (Exhibit FF payroll summary). On-call firefighter payments are coded in the payroll as "6-01." Based on the Department's records, Hammer was paid 27 hours additional compensation for June 2010. The Department's time log reflects 12 hours earned by Hammer for services other than ropes training. Therefore, it appears from the reconciliation that Hammer was paid 12 hours for ropes training in addition to her continued City salary. Frostenson states that Hoffman's records also cannot be reconciled. (Exhibit FF)

Frostenson states that there are multiple instances wherein she cannot reconcile Department timecards to payroll given to the City Treasurer. She would need to conduct a full reconciliation analysis or have an auditor determine the extent of the issue.

Preliminary Findings as to Issues #1 - #8

Nick Carnes:

Of the records reviewed, the time submitted on Nick Carnes' timecard was consistently less than the time submitted to the City for payment. In these cases Tina Carnes added time to the records without explanation. This review indicates overpayment to Nick Carnes. The conclusion reached based upon the review of the records is corroborated by the statements of witnesses who said that they did not believe Nick Carnes worked the number of hours for which he was being paid. This situation continued for two reasons. First, employees feared for their positions should they speak up. Second, the City Treasurer did not have authority to review the time records prior to payment. Multiple witnesses, including the City Treasurer and Assistant Fire Chief raised these concerns with Hamner; however, they were not addressed. Based upon the information reviewed to date there is a strong indication that the time submissions were fraudulent. The investigator suggests that further auditing of this process be performed by the City's outside auditors.

Mal Prior:

Based upon the records reviewed and Prior's statements, the Fire Department's pay practices relating to Prior's compensation are a clear departure from basic wage and hour law principles. It appears that Prior was not paid for hours worked and for overtime hours. In addition, the misstatement of his hours precluded his participation in the normal full time benefits. This issue should be fully audited by the City's outside auditors.

Remaining Issues Contained in 3-8:

Sufficient evidence exists of potential falsification of documents, misuse and/or misappropriation of City property and funds, and improper use of Association funds to warrant a full audit and outside investigation of these issues. Witnesses should be interviewed in conjunction with their review of documentation so that they can guide investigators as to which charges were made for personal purchases and by whom the charges were made.

It is clear that the reporting relationship between the Chief, Jeff Carnes and Tina Carnes created a conflict of interest in violation of 7.3. Sufficient evidence also exists to trigger an investigation regarding whether the City has complied with Idaho statutes pertaining to nepotism.

Sufficient evidence also exists to support a finding that Hamner was made aware of the issues set forth above and did not notify the Mayor or take immediate action to trigger a formal audit of the situation or to address the issues. This conduct is inconsistent with her duties as the City Administrator. Hamner and the Carnes family members were not interviewed with regard to these allegations due to the potential legal implications.

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Dated this 20th day of December, 2011.

Management Northwest



By _____
Patricia Latham Ball

EXHIBIT G

JIM J. THOMAS
Prosecuting Attorney
TIMOTHY K. GRAVES
Chief Deputy
ANGELA S. NELSON
Deputy
MATTHEW E. FREDBACK
Deputy

STATE of IDAHO



KRAMER JUDICIAL BUILDING
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BLAINE COUNTY PROSECUTING ATTORNEY

COPY

November 21, 2012

Mayor Dewayne Briscoe
Members of the Sun Valley City Council
Sun Valley City Hall
PO Box 416
81 Elkhorn Road
Sun Valley, ID 83353

RE: Criminal Investigation re: Employee Misconduct

Mayor Briscoe and Members of the Sun Valley City Council:

I. Scope of Investigation

In October of 2011, Sun Valley City Treasurer Michelle Frostenson complained to Sun Valley Mayor Wayne Willich that certain employees were misusing City property, committing fraud with City credit cards and failing to accurately document personal leave/vacation hours. Based upon Frostenson's complaints, the Sun Valley City Council notified Kirt Naylor of the Idaho Counties Risk Management Program (ICRMP) who in turn facilitated an ICRMP contract with Patricia Ball, Esq. of Management Northwest to conduct an investigation into Frostenson's complaints.

In December of 2011, my Office was requested by ICRMP attorney Kirtlan Naylor to initiate an investigation regarding allegations of employee misconduct, which included misuse of public funds, time card fraud, credit card abuse and illegal use of public

property. This request was initiated as a result of a conclusion by independent investigator Patricia Ball that "revealed suspected criminal activity". Specifically, the request included allegations that former City Administrator Sharon Hammer misused a City vehicle and credit card, and failed to accurately account for personal leave/vacation hours. In addition, it was alleged that Fire Chief Jeff Carnes had possibly made unauthorized personal and excessive gasoline purchases using a City credit card, and had engaged in time card fraud involving his son, part-time firefighter/EMT Nick Carnes.

As the Prosecuting Attorney is generally precluded from conducting their own criminal investigations, I requested investigative assistance from the Idaho Attorney General's Criminal Investigative Unit and Scott Birch, Criminal Investigative Unit Chief, opened a criminal investigation into the allegations in January of 2012. On February 9, 2012, Investigator Birch obtained three (3) bankers boxes of documents from Naylor that included credit card statements from the City of Sun Valley for October of 2010 through November 2011, payroll and time card records for the Sun Valley Fire Department for fiscal years 2009-2011, as well as a copy of Patricia Ball's Investigation Report dated December 20, 2011. A review of this data necessitated additional documentation that was requested and/or subpoenaed from a number of sources including the City of Sun Valley, employee cell phone records, independent employment records, court affidavits, and sales receipts from various retailers from March of 2010 up to and including September of 2012. In addition to the referenced documents, an electronic copy of the HSNO Forensic Audit and supporting documentation was reviewed and heavily relied during the course of the investigation.

II. Standard for Filing Charges in Criminal Cases

In order to charge a person with a crime, my legal and ethical responsibility requires that there be probable cause supporting the charge. See State v. McGreevey, 17 Idaho 453, 463-64, 105 P. 1047, 1050 (1909); Idaho Const. Art. I, § 8; Idaho Code § 19-804; Idaho Crim. R. 5.1; IRCP 3.8(a). Probable cause results from information that would lead a person of ordinary care and prudence "to believe or entertain an honest and strong

suspicion that such person is guilty" of a particular crime. State v. Alger, 100 Idaho 675, 677, 603 P.2d 1009, 1011 (1979).

Having a strong enough suspicion to believe in a person's guilt does not end the inquiry. In determining whether charges should be filed, a prosecutor must also determine whether there is a likelihood of conviction given the high standard of proof required in a criminal case. In criminal cases, the burden of proof placed upon the State is to prove its case beyond a reasonable doubt, which is a far more difficult burden of proof than the preponderance of the evidence standard used in civil cases. See State v. Sheahan, 139 Idaho 267, 273, 77 P.3d 956, 962 (2003) (explaining that the meaning of proof beyond a reasonable doubt requires "an abiding conviction, to a moral certainty, of the truth of the charge" in the eyes of a unanimous jury).

Analyzing the likelihood of conviction requires me to look at the strength of the evidence presented, as well as consider defenses and evidence likely to be raised by the accused. In the context of government employees, the most common of these defenses is that the employee was given permission, or was authorized, to engage in the particular act(s) of alleged misconduct. If tacit or explicit authorization was given, the employee may lack the requisite criminal intent, as they believed their actions were justified and permitted. See I.C. 18-2406(3) (providing for a defense to theft when the property is taken "open and avowedly, and under a claim of right made in good faith").

In sum, I am compelled to review requests for criminal prosecution very critically. Besides the important legal and ethical considerations set forth above, I must also review the human and economic costs of prosecution, and the toll criminal prosecution takes on all involved. While I am responsible for seeing that those who violate the criminal laws in our community are brought to justice, I will not initiate criminal prosecution unless I am very confident that the charges are supported by compelling evidence and will ultimately be proven beyond a reasonable doubt at trial.

III. The Allegations against Sharon Hammer

a. Misuse of City Property

Hammer is alleged to have used a City vehicle for personal use, above and beyond her responsibilities as City Administrator, and is also alleged to have used a City credit card for gas purchases for the personal use of the vehicle.

There is a lack of hard evidence supporting criminal charges for these allegations. Although Hammer used the City vehicle for personal use, there is a lack of documentation to support criminal charges. As stated in the HSNO report,

Based on our review of the [Hammer fuel] charges, there is not adequate information to determine if the charges were for gasoline use in a City-owned or a personally-owned vehicle, nor can we determine how many miles the City-owned car was used for personal use and City business use. It does not appear that Ms. Hammer maintained documentation as to the type of City business attended to with the City-owned vehicle or the miles used for City or personal use.

The lack of evidence establishing these alleged crimes with specificity presents a serious hindrance to filing criminal charges and will ultimately hinder any attempt to prove charges beyond a reasonable doubt.

More compelling, however, is evidence establishing that the City permitted these activities. ~~Despite the fact that use of a City vehicle for personal use is strictly prohibited by City of Sun Valley Policy 3.13, Mayor Wayne Willich expressly authorized Hammer to use the City vehicle for business and personal use, citing her standing as an on-call EMT in support of her need to use the vehicle on a full time basis.~~ Willich also authorized Hammer to use the city credit card for fuel purchases associated with Hammer's use of the City vehicle. The credit card charges were then submitted and approved during the regular course of claims, which provides another layer of authorization from Hammer's supervisors.¹

¹ As noted throughout the HSNO report, standard procedures and protocols were routinely disregarded by City officials entrusted with the oversight of credit card and claim processing. This general willingness to disregard City policies and procedures is a recurring theme throughout this investigation.

Evidence and documentation supporting this alleged misuse of City property is either lacking or the activity had been approved by City officials. Accordingly, I cannot find that sufficient evidence exists to file and prove these allegations beyond a reasonable doubt.

b. Personal Leave

Hammer is alleged to have failed to account for personal leave she took while employed by the City. Specifically, the HSNO Report found 352 unexcused hours for which the City paid Hammer.

As was the case with the use of the City vehicle, Hammer's use of personal leave was consistent with the apparent approval of her supervisors. In this regard, Willich allowed Hammer to exercise a "flex time" schedule that did not require Hammer to account for her actual hours on the job. Although the Personnel Manual states that the normal work schedule is 8:00 a.m. to 5:00 p.m., Willich expected Hammer, as a senior executive, to work additional hours beyond her regularly scheduled work day and was authorized to take time off that corresponded with the extra hours she worked beyond the regular work day.² This lack of a structured schedule and flexible time accounting makes it highly likely that there are considerable hours of Hammer's work time that are unaccounted for, and these unaccounted hours could significantly decrease, or even erase, the 352 unexcused hour deficit set forth in the HSNO Report. Furthermore, there is no way of establishing an accurate accounting of hours worked without Hammer's own recollection, and thus, no way of independently establishing when Hammer was working or taking personal time off, which poses another significant problem in building a criminal case against her.

For the above stated reasons, there is insufficient evidence to establish that Hammer submitted false claims or committed theft for unaccounted personal leave, and I will not file criminal charges for this alleged misconduct.

² These extra hours included Hammer's attendance at evening meetings, work performed at home, and her status as a 24/7 EMT.

EXHIBIT H



CITY OF SUN VALLEY CITY COUNCIL AGENDA REPORT

DATE: December 18, 2008
REGARDING: Consideration and appointment of City Attorney
TO: Mayor and City Council
FROM: Sharon Hammer, City Administrator

Idaho Code § 50-204 Appointment of Officers provides that the mayor . . . with the consent of the council shall appoint a . . . city attorney . . . for the efficient operation of the city.

Idaho Code § 50-204a (1) Duties of City Attorney provides that:

The city attorney shall be the legal advisor of the municipal corporation, may represent the city in all suits or proceedings in which the city is interested, and shall perform such other duties as may be prescribed by ordinances and resolutions duly passed. *Nothing herein, however, shall preclude any city from employing alternative additional counsel when deemed advisable.*

The Mayor is recommending that Adam King be appointed as the City Attorney for purposes of:

- general representation at City Council and Planning and Zoning meetings including administrative meetings and staff meetings and meetings with third parties outside the City;
- preparation and/or review of all contracts, resolutions, agreements and ordinances;
- preparation of legal opinions involving municipal law;
- presentation of appropriate training seminars for administrative personnel regarding municipal law and planning and zoning updates;
- preparation of the record and transcript for judicial review petitions;
- general municipal law advice and consultation to the Mayor and City Council members in appropriate circumstances; and
- other services as agreed upon by King and the City.
- All of the above is on an as needed basis and at the discretion of the City.

In the past the city attorney has been paid a retainer on a monthly basis and billed against the retainer. The Mayor is recommending that Adam work on an hourly basis as needed and bill for the hours worked. The City may hire alternative or additional legal counsel at their discretion.

Recommended Action: Move to consent to appointing Adam King as City Attorney as outline above.

EXHIBIT I



ATTORNEYS AND COUNSELORS

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DIRECT DIAL: 208.388.4832
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ENGAGEMENT LETTER

December 6, 2011

*Not signed by
City until
12/12/11*

VIA EMAIL

Mayor and Council Members
City of Sun Valley

Re: *Legal Representation*

Dear Honorable Mayor and Council Members:

This letter will confirm the understanding of the representation that Hawley Troxell Ennis & Hawley LLP (the "Firm") has agreed to undertake on behalf of the City of Sun Valley (the "City"), and to set forth the scope and the terms of our engagement.

Please review this letter carefully. If it meets with your approval and reflects your understanding of our respective responsibilities, please sign and return the letter.

1. **Scope of the Engagement**

The Firm will defend the City's interests with regard to public records requests made by attorney James R. Donoval in November 2011 any other tasks as instructed by the Mayor or City Council.

2. **Progress and Reporting**

The status of the matter as well as any significant developments will be regularly reported to City Attorney Adam King or your designee as they occur. Furthermore, copies of all significant documents and communications will be forwarded to you as this matter progresses.

Please remain in close contact with the individuals in the firm you will be working with to ensure meaningful consultations regarding instructions and authority occur. As this matter progresses please bring any questions or concerns immediately to our attention so that they can be promptly and effectively addressed and resolved.

Facsimiles, cell phones and email are common methods of communications employed by this firm. As you are no doubt aware these forms of communication are not secure against unauthorized access. These forms of communication do not ensure the confidentiality of their contents and there is potential risk of disclosure and loss of attorney-client privilege in using these forms of communications. If you object to our using any one or more of these forms of communication, please let us know immediately and we will attempt to honor that request.

3. Staffing

The attorneys primarily responsible for rendering legal services in this matter are Brad P. Miller and D. John Ashby. Where it is to your advantage to do so, we may utilize the services of other lawyers, paralegals, and law clerks in the Firm. We will attempt wherever possible to assign work assignments in a way that maximizes legal effectiveness and time efficiency, while minimizing your legal expenses. The Firm's goal is to provide cost effective, high quality legal services. The Firm agrees to represent you in this matter on an hourly fee basis. The time spent by various lawyer and non-lawyer persons in this office will be charged at the applicable hourly rate for each person.

4. Basis for Fees and Costs

The Firm has established hourly rates for each attorney, paralegal, and law clerk in the Firm. These hourly rates are based on a variety of factors including the experience and expertise of each individual and the nature of the legal work being performed. Currently, Brad P. Miller's hourly rate for this matter is \$275.00 and D. John Ashby's hourly rate for this matter is \$200.00. All charges will be incurred in 1/10th of an hour intervals.

5. Billing Procedures

As a general business practice the Firm's billing rates and fixed fees are reviewed as of January 1st of each year. Any rate adjustments are reflected on the monthly invoice. The specific basis on which fees, costs and expenses are computed, as well as billing procedures including the handling of past due accounts are set forth in greater detail in the enclosed sheet entitled "Information for Clients," which is incorporated into this letter.

It is the Firm's practice to serve clients with the most effective support systems available, while at the same time allocating costs of such systems to the clients who use them. Therefore, in addition to fees for legal services, you may also be charged for courier, photocopy duplication, computer research facilities (such as LEXIS and WESTLAW), document preparation, court reports, and other out-of-pocket costs incurred on your behalf.

In most matters, billing statements will be generated on a monthly basis. Substantial transactions or matters may be billed once upon conclusion of the matter. In those cases, upon your request, we will prepare periodic informational statements setting forth the approximate level of fees incurred to date.

Every effort is made to include expenses in the statement for the month in which the expenses are incurred. However, some expenses such as courier charges are not available until the following month, in which case a supplemental statement will be sent to you for these additional charges.

Statements are due and payable upon receipt, but in any event no later than thirty (30) days after they are received by you. As our statements reflect time expended anywhere from 15 to 45 days prior to the statement date, we would appreciate receiving payment for our services upon presentation.

6. Record Retention/Destruction Policy

At the conclusion of this matter, the Firm will return any valuable property you have entrusted to us. The Firm will also dispose of any and all superfluous documents consistent with maintaining the confidentiality of the contents of those documents. The Firm will store the balance of the file, at the Firm's expense, for at least five (5) years. Unless you have made other arrangements, the file will be disposed of at the Firm's expense after the five (5) year retention period. A copy of the Firm's Records Retention/Destruction Policy is available upon request.

7. Independent Legal Review

The Firm has written this engagement letter on its own behalf. Please feel free to seek independent legal advice from legal counsel of your choosing in order to review this engagement letter. As we wish to provide you ample opportunity to consult with independent counsel, we do not require that you return this letter immediately. If you wish, we will be glad to provide you with names of counsel for your interview and selection and to discuss with such counsel any issues arising under this engagement letter.

City of Sun Valley
December 6, 2011
Page 4

We look forward to representing you and thank you for looking to us to assist you. If you have any questions concerning the contents of this letter, or any matter relating to our legal representation, please do not hesitate to call me directly. We appreciate the opportunity to represent you.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Brad P. Miller

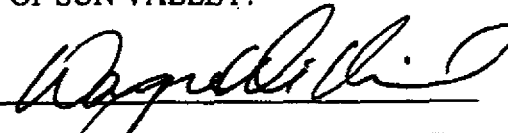
BPM/tsul

Encl: Client Service Policies

I have read and understand the terms of our engagement as stated above and agree to be bound thereby.

DATED this 13th day of December, 2011.

CITY OF SUN VALLEY:

By: 
Its: Mayor
Sun Valley, ID

CLIENT SERVICE POLICIES

CLIENT SERVICE

At Hawley Troxell Ennis & Hawley LLP, we maintain the firm's century-old tradition of professional excellence and integrity by providing every client with the highest quality legal service. Regardless of a client's size, business, or location, the services we provide are individually fashioned to meet each client's specific needs and wishes. We are aware of our clients' concerns for efficiency and economy and make every effort to keep costs down, consistent with proper representation.

The ideal client-attorney relationship requires a mutual understanding of expectations and an open line of communication. The following policies were developed with that objective in mind and with a commitment to hold the line on escalating legal costs.

INITIAL CONFERENCE

The client-attorney relationship generally begins with an initial conference. When scheduling this conference, you will be asked to provide information regarding potential parties involved in your situation so that we can ensure we have no conflict of interest with other clients or firm members. The purpose of this initial meeting is for your attorney to learn about your situation, and then to discuss with you the scope and amount of services that will need to be provided, who will provide those services, and the fees and costs involved.

A fundamental principle in the client-attorney relationship is that the attorney maintains confidentiality of information relating to the representation. We encourage you to communicate fully and frankly with your attorney.

ENGAGEMENT LETTER OR REPRESENTATION AGREEMENT

The initial meeting will be followed by an engagement letter from your attorney that will outline the pertinent facts of the case, the scope of the representation, the fees to be charged, and the possible expenses to be incurred.

RETAINER

A retainer may be requested at the beginning or during the course of representation. Depending on our arrangement with you, this retainer may be used throughout the representation to pay for out-of-pocket costs and our fees. At the conclusion of the representation the retainer will be used to pay our final invoice for costs and legal services. If a balance remains, it will be refunded to you. If the retainer is exhausted, you are responsible for payment of fees and out-of-pocket costs not covered by the retainer. Payment of a retainer does not relieve you of your obligation to make prompt payment of our monthly invoices.

Unless otherwise directed, all retainer funds are placed in an interest bearing client trust account. The interest on this account is donated, by law, to support public interest objectives of the Idaho Law Foundation.

CLIENT SERVICE POLICIES

FEES AND EXPENSES

We usually compute our fees on an hourly basis. These standard hourly rates are subject to modification at any time. Time charges may, if applicable, include waiting time in court or elsewhere and time spent in travel. Other fee arrangements include setting a reasonable fixed fee for services, and occasionally the firm represents a client on a contingent fee basis. Premium rates may also be charged for work involving greater complexity, intensity of effort, specialized services, or additional liability potential.

Besides professional fees, some legal work will involve additional charges for out-of-pocket expenses and support costs, including, but not limited to:

- ♦ photocopy ♦ delivery ♦ travel ♦ document production ♦ court reporter ♦ expert witness fees ♦ court fees ♦ computer-assisted legal research

Unless arrangements are made, the firm does not advance costs of more than \$300. Necessary costs above that amount may be billed directly to you by the service provider.

BILLING STATEMENTS

Unless otherwise agreed, you will receive monthly statements. These statements provide you with chronological information about the services provided and the cost of such services. We can, however, provide you with as much—or as little—detail as you wish, regarding the services we provide. You should discuss your billing preferences with your primary attorney. All invoices are due and payable in full upon receipt. If your account becomes delinquent:

- ♦ You will be subject to an interest charge of 12% per annum for invoices delinquent for more than 30 days.
- ♦ You will be subject to attorney fees and expenses allowed by law if your account is referred for collection.
- ♦ The firm may find it necessary to terminate services and withdraw from representation.

Problems or questions about bills should be promptly directed to your primary attorney or Susan Olson at (208) 344-6000.

WORKING RELATIONSHIP

You convey to the firm, as your legal representative, the power of attorney to execute all pleadings and take such other actions as may be necessary or advisable on your behalf. Any settlement affecting your interests will, however, require your prior consent.

Your satisfaction with our law firm depends on your relationship with the individuals who are helping you solve your problem. If you have concerns about which attorneys work on your matter, please discuss these concerns with your primary attorney. If, at any time during our representation, you become unhappy or dissatisfied with our work, we encourage you to contact your primary attorney and discuss your concerns. If you are unable to resolve these issues with your primary attorney, please contact Steven W. Berenter, our Managing Partner at (208) 344-6000.

EXHIBIT J

SCOTT OLDHAM
CLAIMS MANAGER

December 15, 2011

CITY OF SUN VALLEY
Adam King, City Attorney
PO Box 416
Sun Valley, ID 83353

RE: CLAIM NUMBER: 2012038739
INSURED: CITY OF SUN VALLEY
CLAIMANT: Sharon Hammer
DOL: 11/21/2011

Dear Mr. King:

This will acknowledge our receipt and review of the complaint for damages and injunctive relief filed by Sharon R. Hammer against the City of Sun Valley, Nils Ribi, and Adam King. The complaint was filed November 21, 2011 in the District Court of the Fifth Judicial District State of Idaho as Case No. CV-2011-928.

Reviewing the complaint, the allegations which give rise to this action surround Ms. Hammer's activities as the city manager for the City of Sun Valley. The complaint describes an ongoing dispute between Ms. Hammer and council member Nils Ribi. The complaint also describes conflicts between the city council and Ms. Hammer regarding her role with the city administrator and actions she has taken as its manager. According to the complaint, Ms. Hammer has been placed on paid administrative leave pending an investigation. The complaint alleges the actions of the defendants violate the Idaho Protection of Public Employees Act which, according to Ms. Hammer, prohibits an employer from taking adverse actions against an employee who communicates, in good faith, a violation or suspected violation of law rule or regulation adopted by a political subdivision of the state. She seeks monetary damages as well as injunctive relief.

We direct your attention to the definitions, coverages and exclusions sections of the 2011/2012 ICRMP policy where, at Section II, general liability insurance is provided. The policy reads:

COVERAGE A. General Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as *damages for personal injury or property damage* which arise out of an *occurrence* during the Policy Period.

See ICRMP policy page 16.

The policy defines the terms "accident", "bodily injury", "claim", "damages", "occurrence", "personal injury", and "property damage" as follows:

The following definitions are applicable to the General Liability and Premises Medical Payments Insuring Agreements of this Policy:

1. **"Accident"** means an unexpected happening without intention or design.

...

3. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.

...

6. **"Damages"** means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.

...

10. **"Occurrence"** means an *accident* or a continuous or repeated exposure to conditions which result in *personal injury* or *property damage* during the Policy Period. All personal injuries to one or more persons and/or *property damage* arising out of an *accident* or a continuous or repeated exposure to conditions shall be deemed one *occurrence*. Coverage for personal injury arising out of sexual molestation shall be covered as one occurrence and all damages shall be deemed to have occurred at the time the initial act is committed whether committed by one perpetrator or two or more perpetrators acting in concert regardless of the number of incidents of sexual molestation taking place after the initial incident. **This insurance does not apply to any insured that has been found to have committed a criminal act involving sexual molestation.**

11. **"Personal Injury"** means *bodily injury*, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander, or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property. As respects Coverage C only, *personal injury* shall also mean false arrest, false imprisonment, detention, unlawful discrimination and violation of civil rights arising out of law enforcement activities.

...

13. "Property Damage" means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.

The applicable exclusions to the General Liability Insuring Agreement are found at pages 20-21 of the policy and read:

"Liability Coverage under the General Liability and Premises Medical Payments Insuring Agreements does not apply:

With Respect to Coverages A, B, and C:

2. To *personal injury* or *property damage* resulting from an act or omission intended or expected from the standpoint of any *insured* to cause *personal injury* or *property damage*. This exclusion applies even if the *personal injury* or *property damage* is of a different kind or degree, or is sustained by a different person or property, than that intended or expected. This exclusion shall not apply to *personal injury* resulting from the use of reasonable force to protect persons or property, or in the performance of a duty of the *insured*.

10. To any *claim* or *suit* for which the only monetary *damages* sought are costs of *suit* and/or attorney's fees.

14. To any *claim* relating to employment or wrongful termination of the employment of any person, including threatened, actual or alleged discrimination or harassment.

The ICRMP policy also provides Errors and Omissions coverage at Section IV of the policy. The insuring agreement reads:

COVERAGE A. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you shall become legally obligated to pay as *damages* because of any *claim* which is *first made* against you during this Policy Period, arising out of any *wrongful act* by you.

All *wrongful acts*, including all related *wrongful acts*, must take place after the retroactive date, if any, shown in the Declaration Page and before the end of this Policy Period. A *claim* may also be *first made* against you if it is made during any Extended Reporting Period we may provide pursuant to the Specific Conditions outlined in this section below,

See ICRMP policy, p. 28.

The policy defines the terms bodily injury, claim, damages, personal injury, and wrongful act at page 28 of the policy which reads:

The following definitions are applicable to the Errors and Omissions Insuring Agreement of this Policy:

1. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
2. **"Claim"** means a demand received by you for money *damages* alleging a *wrongful act* of a tortious nature by you. No *claim* exists where the only monetary *damages* sought or demanded are costs of *suit* and/or attorney's fees. A *claim* shall include complaints filed with the Idaho Human Rights Commission (IHRC) and the Equal Employment Opportunities Commission (EEOC) subject to the exclusions set out below.
3. **"Damages"** means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.
...
5. **"Personal Injury"** means *bodily injury*, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property.
6. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use.
7. **"Wrongful Act"** means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

The applicable exclusions to the Errors and Omissions section of the policy are found at pages 29-30 which read:

The Errors and Omissions Insuring Agreement does not cover any claim:

2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended *wrongful act* committed by you or at your direction.
3. For *bodily injury, personal injury, or property damage*, as defined in this Section.
4. Resulting from a *wrongful act* intended or expected from the standpoint of any *insured* to cause *damages*. This exclusion applies even if the *damages* claimed are of a different kind or degree than that intended or expected.

Coverage under the General Liability Insuring Agreement would not extend to claims involving intentional conduct or intentional acts on behalf of the City of Sun Valley or, its employees. To the extent the verified complaint is based upon intentional acts, those claims are excluded from coverage under the General Liability Insuring Agreement.

Additionally, the General Liability Insuring Agreement does not extend coverage to claims relating to employment or wrongful termination. We recognize that, presently, Ms. Hammer has not been discharged, nor has she been demoted or, suspended without pay. Instead, she is on paid administrative leave pending an investigation of her actions as the city administrator. We also recognize the alleged violations of the Idaho Protection of Public Employees Act are not limited to employment disputes between Ms. Hammer and the City of Sun Valley.

In the Errors and Omissions section of the policy, coverage is extended for damages caused by wrongful acts which would include the performance or failure to perform a legal duty or responsibility in a tortious manner. While coverage for employment disputes is not excluded, this section of the policy excludes coverage for bodily injury, personal injuries, or property damage. For that reason, any claims for emotional distress or other bodily injuries arising out of any employment disputes would not be covered under the Errors and Omissions section of the policy. However, coverage would exist for economic damages such as lost wages and benefits. Additionally, consistent with the General Liability Insuring Agreement, claims arising from intentional acts are excluded from coverage. Finally, claims where the sole monetary relief sought is limited to injunctive relief and attorney's fees are not covered under the policy.

Because the complaint contains allegations relating to alleged violations of the Idaho Protection of Public Employees Act which could be construed as arising independent from an employment action against Ms. Hammer or could involve employment disputes seeking lost wages or benefits, ICRMP will, in accordance with the terms and conditions of the policy, provide the City of Sun Valley, Nils Ribbi, and Adam King, a defense. By extending a defense, ICRMP does not waive, and reserves all rights under the terms and conditions of the insurance policy, and specifically

City of Sun Valley
2012038739
Page 6

reserves its right to deny any obligation to indemnify the City, Mr. Ribí or Mr. King for any claims that are currently pled and which do not describe a covered claim under the terms and conditions of the ICRMP policy. Additionally, ICRMP does not waive its right to withdraw its defense should it be determined that coverage under the policy does not exist for the claims set forth in the complaint.

If you have any questions concerning the foregoing, and our position with respect to ICRMP's duty to defend and indemnify the City and the individual defendants, please contact the Sr. Claims Specialist assigned to this claim, George Blickenstaff at 208-336-3100, or myself.

Sincerely,


Scott Oldham
Claims Manager

cc: Rick Ferguson, ICRMP Executive Director
Betty Urbany, Agent

EXHIBIT K

NAYLOR & HALES, P.C.
950 W. Bannock Street, Ste. 610
Boise, Idaho 83707
(208) 383-9511; (208) 383-9516 (fax)

 **ORIGINAL**

LEGAL SERVICES AGREEMENT AMENDED February 2013

THIS AGREEMENT, effective this 13th day of February, 2012, is between the City of Sun Valley ("Sun Valley City"), and the firm of Naylor & Hales, P.C. This Agreement sets forth the terms of our representation of Sun Valley City's legal interests, including information about our fees and billing procedures.

SERVICES: Naylor & Hales, P.C. agrees to provide legal services to Sun Valley City and its Staff in connection with *subpoena issues for privileged documents and general litigation services related to action taken by Jim Donoval, known as H&S case files 8620, 8617, 8715*. The services shall include, but not be limited to, the actual amount of time that an attorney is required to spend on Sun Valley City's behalf, including telephone calls, office conferences, document preparation and review, research, court appearances, and travel time, etc.

FEES: Our fees for services are based upon a variety of factors. In assessing fees for legal services, the Idaho Rules of Professional Conduct require lawyers to consider several factors. These factors include the time and labor required, the novelty and difficulty of the issues involved, the skill needed to adequately perform the services, the amount of money at stake, the results obtained, the time limitations imposed by the client or by circumstances, the length and nature of the professional relationship with the client, and the experience, competence, and reputation of the lawyer(s) performing the services. Based upon the nature of the work and time involved in representing Sun Valley City, the agreed fees payable to the firm for handling Sun Valley City's legal matters is **\$135.00 per hour for all services, plus costs, which agreed to amount represents a discounted rate for public entities.**

COSTS: In addition to the fees, you will also be billed for out-of-pocket expenses, such as court filing fees, court reporter fees, deposition costs, copy/scan expenses, travel expenses, investigation fees, and similar charges that may be incurred in connection with our representation of Sun Valley City's interests. These costs represent out-of-pocket expenses necessary to render the services requested. Normally, these costs will be paid by you directly to the provider, but this firm will request the reimbursement of these expenses which have been incurred and paid on Sun Valley City's behalf.

CLIENT BILLING: We will submit a monthly billing statement to you which sets forth the fees and costs in all cases. Statements will be mailed to you on the first day of each month for services performed and costs incurred during the previous month. These statements are due and payable in full upon receipt. Unless the firm's statements are paid within thirty (30) days of the statement date, this firm reserves the right, upon written notice to you, to suspend all activities on Sun Valley City's behalf and obtain leave of the court to withdraw from further representation of Sun Valley City's interests in any pending litigation. In addition, if the amount of the statement is not paid in full within thirty (30) days of

LEGAL SERVICES AGREEMENT - 1.

the statement date, a finance charge will be assessed on the outstanding balance. The finance charge will be computed by applying a periodic rate of one and one-half percent (1-1/2%) per month (18% per annum) against the past due balance.

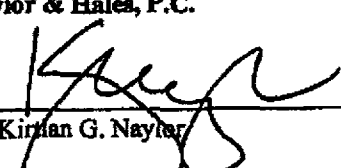
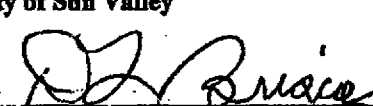
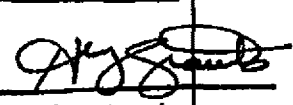
CONFLICTS: You have not advised us, nor are we presently aware of any actual or potential conflicts of interest in representing you at this time. We do reserve the right, however, to withdraw from our representation should any such conflict arise in the future.

WITHDRAWAL: Naylor & Hales reserves the right to withdraw from our legal representation of Sun Valley City's interests if it fails to honor the terms of this Agreement or if Sun Valley City's conduct has made our representation unreasonably difficult. In such a circumstance, Sun Valley City agrees to take all steps necessary to complete our withdrawal from Sun Valley City's legal matter, and also agrees to pay for all services rendered and costs which have been incurred on Sun Valley City's behalf up to the date of our withdrawal. ** In any litigation, Naylor & Hales may only withdraw with the court's order upon notice of motion. costs by DLB*

Naylor & Hales will expect to represent Sun Valley City's interests until the conclusion of the matter involved. If, however, you wish to terminate our services, please advise us, and we will promptly take the necessary steps to conclude our representation in compliance with the Idaho Rules of Professional Conduct. In such event, you shall not be relieved of Sun Valley City's obligation to pay for all services rendered or costs incurred on Sun Valley City's behalf prior to the date of termination.

This agreement shall also be applicable to any other matter for which you retain this firm. We reserve the right to change our fee structure. However, if our fee structure changes, we will provide you with reasonable written notice.

The members of this firm are aware of the burden that high legal fees can create. Therefore, we will attempt to expend only that amount of time required to properly represent Sun Valley City's interests. Please feel free to discuss our fees with us at any time, or any other questions or concerns you may have about this Agreement or the fee arrangement in Sun Valley City's case, particularly at the time of the first consultation.

Naylor & Hales, P.C. By <u></u> Kirman G. Naylor Naylor & Hales, P.C. 950 W. Bannock Street, Ste. 610 Boise, ID 83702 383-9511; 383-9516 (fax)	City of Sun Valley By <u></u> Mayor Dewayne Briscoe City of Sun Valley Attest: <u></u> Attn: City Administrator City Clerk 81 Elkhorn Rd.; PO Box 416 Sun Valley, ID 83353 (208) 622-4438;
--	--

Thank you for retaining Naylor & Hales to represent your legal interests.

LEGAL SERVICES AGREEMENT - 2.

IN CASE OF ERRORS OR INQUIRIES ABOUT YOUR BILL

The Federal Truth-in Lending Act requires prompt correction of the billing mistakes.

1. If you want to preserve your rights under the Act, here's what to do if you think your bill is wrong or if you need more information about an item on your bill:
 - a. Do not write on the bill. On a separate sheet of paper, write (you may telephone your inquiry but doing so will not preserve your rights under this law) the following:
 - i. Your name.
 - ii. A description of the error and an explanation why you believe it is an error.
 - iii. The dollar amount of the suspected error.
 - iv. Any other information (such as your address) which you think will help the firm to identify you or the reason for your complaint or inquiry.
 - b. Send your billing error notice to: Naylor & Hales, P.C., 950 W. Bannock Street, Ste. 610, Boise, Idaho 83702.

Mail it as soon as you can, but in any case, early enough to reach the firm within 60 days after the bill was mailed to you.

2. Our firm must acknowledge all letters pointing out possible errors within 30 days of receipt, unless the firm is able to correct your billing during that 30 days. Within 90 days after receiving your letter, our firm must either correct the error or explain why the firm believes the bill was correct. Once our firm has explained the bill, our firm has no further obligation to you even though you still believe that there is an error, except as provided in Paragraph 5 below.
3. Once you have notified us in writing of your objection to a bill, neither we nor an attorney or a collection agency may send you collection letters or take other collection action with respect to the amount in dispute; but periodic statements may be sent to you, and the disputed amount can be applied against your credit limit. You cannot be threatened with damage to your credit rating or sued for the amount in question, nor can the disputed amount be reported to a credit bureau or to other creditors as delinquent until the creditor has answered your inquiry. **HOWEVER, YOU REMAIN OBLIGATED TO PAY THE PARTS OF YOUR BILL NOT IN DISPUTE.**
4. If it is determined that our firm has made a mistake on your bill, you will not have to pay any finance charges on any disputed amount. If it turns out that our firm has not made an error, you may have to pay finance charges on the amount in dispute, and you will have to make up any missed or required payments on the disputed amount. Unless you have agreed that your bill was correct, the

LEGAL SERVICES AGREEMENT - 3.

firm must send you a written notification of what you owe; and, if it is determined that our firm did not make a mistake in billing the disputed amount, you must be given the time to pay which you normally are given to pay undisputed amounts before any more finance charges or late payment charges on the disputed amount can be charged to you.

5. If our firm's explanation regarding the disputed amount does not satisfy you, and if you notify our firm in writing within 10 days after you receive the explanation that you still refuse to pay the disputed amount, the firm may report you to credit bureaus and other creditors and may pursue regular collection procedures. But the firm must let you know to whom such reports were made. Once the matter has been settled between you and our firm, our firm must notify those to whom our firm reported you as delinquent of the subsequent resolution.
6. If our firm does not follow these rules, the firm is not allowed to collect the first \$50.00 of the disputed amount and finance charges, even if the bill turns out to be correct.

LEGAL SERVICES AGREEMENT - 4.

EXHIBIT L



SCOTT OLDHAM
CLAIMS MANAGER

...more than just insurance

December 14, 2011

James Donoval
4325 Fairway Nine Condos
P.O. Box 1499
Sun Valley, ID 83353

Re: *Hammer v. City of Sun Valley*

Dear Mr. Donoval:

We have received your letter dated December 6, 2011. In your correspondence, you contend that your client, Ms. Hammer is being prosecuted by the City of Sun Valley in connection with a disciplinary action involving her current employment. It is our understanding Ms. Hammer has not been discharged from her job. Instead, she is on paid administrative leave while an investigation is pending concerning her activities as the City administrator. In your letter, you are requesting that ICRMP provide Ms. Hammer a defense in connection with the ongoing investigation.

We direct your attention to the general conditions section of the ICRMP policy where, at page 3, the company's obligation to provide a defense to its insureds is addressed. The policy reads:

Unless otherwise stated, the following conditions are applicable to ALL sections of this policy.

...

8. **Defense of Claims or Suit.** We may investigate or settle any covered *claim* or *suit* against you. We will provide a defense with counsel of our choice, at our expense, if you are sued for a covered *claim*.

a. With respect to claims or suits involving Section II – General Liability Insurance and Premises Medical Payments, Section III – Automobile Liability Insurance and Automobile Medical Payments and Section IV – Errors and Omissions Insurance, our defense costs incurred with not exceed \$2,000,000 per covered claim, subject to \$3,000,000 in the aggregate for Sections II, III, and IV combined for all covered claims that are subject to this Policy's policy period. The "per covered claim" defense costs amount is the most we will incur regardless whether one or more of Section II, III and IV are involved in a single claim, and is in addition to the Limits of Indemnification shown in the Declarations. Our obligation to defense any *claim* or *suit* ends when either:

(1.) The amount of loss or *damages* we pay equals the Limit(s) of Indemnification afforded under this Policy, or

- (2.) The defense costs incurred by us equal \$2,000,000 per covered claim or the defense costs incurred by us equal \$3,000,000 aggregate for the policy period.
- b. Notwithstanding the aforementioned, we will have no duty to investigate or defend a *claim, suit*, dispute, disagreement or other proceeding seeking relief or redress in any form other than money *damages*, including but not limited to costs, fees, or expenses which any *Insured* may become obligated to pay as a result of a consent decree, settlement, adverse judgment for declaratory relief or injunctive relief. Such denial of investigation or defense includes, but shall not be limited to any *claim, suit*, dispute, disagreement or other proceeding:
 - (1.) By or on behalf of any *insured*, whether directly or derivatively, against:
 - (a.) Any other *Insured*, or
 - (b.) Any other federal, state or local governmental entity or politically subdivision;
 - (2.) By the spouse, child, parent, brother, or sister of any *Insured* for consequential injury as a result of any injury to an *Insured*; or
 - (3.) Involving any intergovernmental agreement(s) where any *Insured* is a party to the agreement(s).

By the plain language of the policy, ICRMP's obligation to defend arises when the insured is sued for a covered claim. The investigation described in your correspondence is not a lawsuit. Because Ms. Hammer has not been sued, she is not entitled to a defense under the ICRMP policy.

If you have any questions concerning our position relative to coverage, we would be happy to review any authority you feel would shed light on the issue of coverage. If you have any questions concerning the foregoing, please contact me.

Sincerely,



Scott Oldham
Claims Manager

cc: Rick Ferguson, ICRMP Executive Director

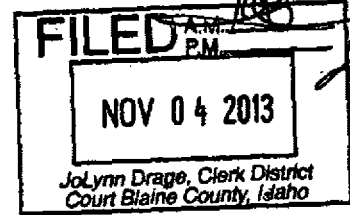
TABLE OF CONTENTS

Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	459
Memorandum Decision Granting Defendants Motion to Dismiss	11/26/2013	567
Defendant's Opposition to Plaintiff's Motion to Enforce Subpoena	12/10/2013	576
Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel	12/10/2013	602

INDEX

Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	11/04/2013	459
Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel	12/10/2013	602
Defendant's Opposition to Plaintiff's Motion to Enforce Subpoena	12/10/2013	576
Memorandum Decision Granting Defendants Motion to Dismiss	11/26/2013	567

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
 1673 W. Shoreline Drive, Suite 200 [83702]
 P.O. Box 7808
 Boise, ID 83707-7808
 Telephone: (208) 489-8989
 Facsimile: (208) 489-8988
 Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants:

Case No. CV-2012-479

**AFFIDAVIT OF COUNSEL IN
SUPPORT OF PLAINTIFF'S MOTION
TO ENFORCE SUBPOENA AGAINST
NON-PARTY PATRICIA BALL AND
TO COMPEL THE PRODUCTION OF
DOCUMENTS WITHHELD FROM
PRODUCTION IN DISCOVERY AND
IN RESPONSE TO SUBPOENA**

STATE OF IDAHO)
 : ss.
County of Ada)

I, ERIC B. SWARTZ, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the state of Idaho.

2. Attached hereto as Exhibit A is a true and correct copy of Defendant City of Sun Valley's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents.

**AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST
NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD
FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - 1**

3. Attached hereto as Exhibit B is a true and correct copy of the Subpoena served on Patricia Latham Ball.

4. Attached hereto as Exhibit C is a true and correct copy of Patricia Latham Ball's response and objections to Plaintiff's Subpoena (Exhibit B hereto), along with Ms. Ball's engagement agreement and time records.

5. Attached hereto as Exhibit D is a true and correct copy of the privilege log produced by Ms. Ball and/or attorney Kirtlan Naylor identifying the documents responsive to the Plaintiff's Subpoena to Ms. Ball (Exhibit B hereto) that are being withheld by Ms. Ball and/or her attorney and/or the City of Sun Valley.

6. Attached hereto as Exhibit E is a true and correct copy of my August 16, 2013 meet-and-confer email to Kirtlan Naylor regarding Ms. Ball's response to the Subpoena.

7. Attached hereto as Exhibit F is a true and correct copy of Kirtlan Naylor's August 23, 2013 response to my August 16, 2013 meet-and-confer email.

8. Attached hereto as Exhibit G is a true and correct copy of my August 27, 2013 meet-and-confer email to Kirtlan Naylor regarding Ms. Ball's response to the Subpoena.

9. Attached hereto as Exhibit H is a true and correct copy of Kirtlan Naylor's August 30, 2013 response to my August 27, 2013 meet-and-confer email.


10. Attached hereto as Exhibit I is a true and correct copy of my September 5, 2013 meet-and-confer email to Kirtlan Naylor regarding Ms. Ball's response to the Subpoena.

11. Attached hereto as Exhibit J is a true and correct copy of Kirtlan Naylor's September 18, 2013 response to my September 5, 2013 meet-and-confer email.

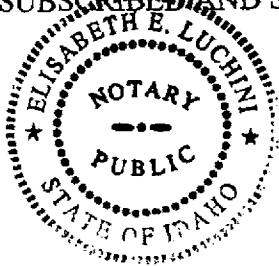
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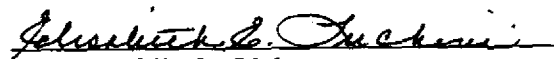
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FURTHER YOUR AFFIANT SAYETH NAUGHT.


ERIC B. SWARTZ

SUBSCRIBED AND SWORN TO before me this 1st day of November, 2013.




Notary Public for Idaho
My Commission expires 07.13.2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

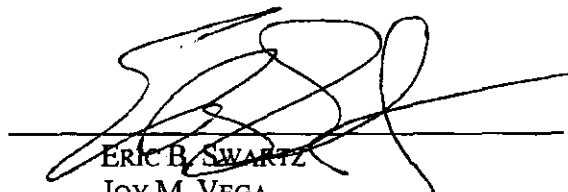

ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT A
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT A
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

MAY 17 2013

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
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Boise, Idaho 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com

Attorneys for Defendants City of Sun Valley, Ribí, and Briscoe

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANT CITY OF SUN
VALLEY'S RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS**

COMES NOW the above-named Defendants, the City of Sun Valley, Nils Ribí and DeWayne Briscoe (collectively "Defendant City of Sun Valley"), by and through their attorneys of record, the law firm of Naylor & Hales, P.C., pursuant to Rules 26, 33 and 34 of the Idaho Rules of Civil Procedure, and respond to Plaintiff's First Set of Interrogatories and Requests for Production of Documents as follows:

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 1.

PRELIMINARY NOTE

Defendants have not yet completed discovery in this matter and therefore do not possess complete information at the present time. Defendants reserve the right to supplement or amend any or all of the answers/responses contained herein once they have had an opportunity to complete discovery regarding the matters referred to in Plaintiff's First Set of Interrogatories and Requests for Production of Documents.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who assisted in or contributed to, in any way, the preparation of your answers and responses to PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT CITY OF SUN VALLEY, and for each such person, identify each specific interrogatory and/or request for production with which they assisted or contributed.

ANSWER: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines. Subject to these objections, Defendant answers none.

INTERROGATORY NO. 2: If you have any knowledge, either directly or indirectly, of any admission of any kind by the Plaintiff, her agents or representatives, which might be relevant in any way to Plaintiff's IPPEA Complaint and/or the Answer in this lawsuit, please state the nature of each such admission, identifying the person or persons who allegedly made such admission, and all persons who heard or may have been in a position to hear such admission.

ANSWER: Objection. This request is overly broad, unduly burdensome, better suited for deposition, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Defendant answers that there are numerous affidavits and pleadings filed by

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 2.

Plaintiff in multiple court cases that are relevant to this action. Plaintiff and her attorney/husband have also authored memorandas and correspondences as City Administrator.

INTERROGATORY NO. 3: Identify each and every duty and obligation of Adam King, as the legal advisor of Sun Valley.

ANSWER: As response, see the attached memorandum written by Plaintiff that establishes the duties of the City Attorney of Sun Valley. (SV 1914) Please see attached City of Sun Valley Personnel Manual (SV 8-9), and City of Sun Valley Resolution 2010-02, City Council and Mayor Powers and Authorities. (SV 1926-36) Please also note Idaho Code § 50-208A.

INTERROGATORY NO. 4: Identify the section, paragraph, or clause of the governing personnel policies and procedures manual or other document that permits the Sun Valley City Council to evaluate Adam King as the legal advisor of Sun Valley.

ANSWER: Objection. The term "evaluate" is vague and undefined. Without waving this objection, please see Idaho Code § 50-206, which discusses the authority of the Sun Valley City Council to remove the City Attorney.

INTERROGATORY NO. 5: Identify each and every duty and obligation of a Sun Valley City Council Member.

ANSWER: As response, please see Idaho Code § 50-701 (et seq.). Please also see portions of the attached City of Sun Valley Personnel Manual, (SV 9), and City of Sun Valley Resolution 2010-02, City Council and Mayor Powers and Authorities, (SV 1926-36), and Resolution 2010-04, City Council and Mayor Code of Ethics and Code of Conduct. (SV 1937-1939)

INTERROGATORY NO. 6: Identify each and every duty and obligation of the Sun Valley City Council President.

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 3.

ANSWER: As a response, please also see portions of the attached City of Sun Valley Resolution 2010-02, City Council Mayor Powers and Authorities. (SV 1929)

INTERROGATORY NO. 7: Identify and describe each and every basis for Sun Valley's decision to place Ms. Hammer on administrative leave in 2011.

ANSWER: Objection. This interrogatory is vague, over-broad, and better suited for deposition. However, without waiving these objections, please see Plaintiff's attached notices of paid administrative leave. (SV 337-341)

INTERROGATORY NO. 8: Identify and describe each and every basis for Sun Valley's decision to place Ms. Hammer on administrative leave in 2012.

ANSWER: See answer to Interrogatory No. 7.

INTERROGATORY NO. 9: Identify and describe each and every basis for Sun Valley's decision to terminate Ms. Hammer from her employment as City Administrator.

ANSWER: This interrogatory is vague, over-broad, and better suited for deposition. However, without waiving these objections, Plaintiff was terminated without cause pursuant to her Employment Agreement.

INTERROGATORY NO. 10: You state for your seventh affirmative defense: "That the Plaintiffs injuries and damages, if any, were proximately caused by the negligent or careless misconduct and acts or omissions of other persons or entities not parties to this action, for whom the Defendants have no legal relationship with or responsibility." Identify each such other person or entity, and describe each related negligent or careless misconduct or act or omission engaged in by such person or entity.

ANSWER: Objection. This interrogatory is vague, over-broad, and better suited for deposition and discovery is still ongoing. However, without waiving these objections Defendant
DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 4.

responds that Plaintiff's prior counsel needlessly publicized her claims through online comments and public media statements, and excessive litigation, contributing to any difficulty she may currently face in finding employment. Discovery has just begun and this may be supplemented.

INTERROGATORY NO. 11: You state for your eighth affirmative defense: "That the Plaintiff has failed to act reasonably or to otherwise mitigate Plaintiff's damages, if any." Identify and describe each and every way that Ms. Hammer has failed to act reasonably or to otherwise mitigate her damages.

ANSWER: Defendant answers that discovery is ongoing and will supplement its response as necessary.

INTERROGATORY NO. 12: You state for your ninth affirmative defense: "That the Plaintiff is estopped to assert the claims and damages alleged in her Complaint by reason of her knowledge of the facts and circumstances regarding the transactions and events at issue and her conduct throughout the transactions and events, which conduct has been relied upon by the Defendants to their detriment." Identify and describe each and every fact and circumstance regarding the transactions and events at issue and Ms. Hammer's conduct throughout the transactions and events that the Defendants relied upon to their detriment.

ANSWER: Objection. This interrogatory is vague, over-broad, and more suited for deposition. However, without waiving these objections, Defendant responds that the release executed by Plaintiff subsequent to her termination without cause, along with the language in her Employment Agreement, preclude her current claims.

INTERROGATORY NO. 13: You state for your fourteenth affirmative defense: "That the Plaintiff's damages, if any, were proximately caused by the Plaintiff's own negligence . . . ,

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 5.

careless or criminal misconduct, thereby precluding any recovery by the Plaintiff." Identify and describe each such act of negligence, careless or criminal misconduct by Ms. Hammer.

ANSWER: Objection. This interrogatory is vague, over-broad, and more suited for deposition. However, without waiving these objections, Defendant answers that Plaintiff's overall conduct while employed with the City of Sun Valley could make it difficult for her to find current employment.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: In your answer to paragraph 18 of Plaintiff's IPPEA Complaint, you state: "Defendants admit the existence of the Personnel Policies and Procedures Manual ('Manual') referenced therein, but deny that Exhibit 1 is a true and accurate copy of the Manual governing the City and its representatives at all times relevant hereto." Please produce true and complete copies of each and every version of any personnel policies and procedures manual and all attachments, exhibits, or addendums thereto, that you assert governed Sun Valley and its representatives (including employees and elected officials) at any and all times related to the acts and omissions asserted in Plaintiff's IPPEA Complaint.

RESPONSE: In response, please see attached documents Bates stamped SV 1-60.

REQUEST FOR PRODUCTION NO. 2: In your answer to paragraph 19 of Plaintiff's IPPEA Complaint, you state: "Defendants only admit that other ethical rules and professional responsibilities have been adopted by the City Council." Please produce true and complete copies of each and every version of each document containing any ethical rules and/or professional responsibilities governing Sun Valley and its representatives (including employees and elected officials) that have been adopted by the Sun Valley City Council at any time related to the acts and omissions asserted in Plaintiff's IPPEA Complaint.

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 6.

RESPONSE: In response, please see attached documents Bates stamped SV 1926-1939.

REQUEST FOR PRODUCTION NO. 3: Please produce true and complete copies of each and every contract for legal services entered into between Sun Valley and Adam King from the beginning of his legal representation of Sun Valley to the date of your response to this Request for Production.

RESPONSE: In response, please see attached documents Bates stamped SV 1912-1913.

REQUEST FOR PRODUCTION NO. 4: Please produce true and complete copies of each and every billing statement or invoice of Adam King to Sun Valley for legal services provided during the timeframe of June 1, 2008 through the date of your response to this Request for Production.

RESPONSE: Objection. This request is not reasonably calculated to lead to the discovery of admissible evidence and calls for information protected by attorney-client privilege and/or work product doctrines.

REQUEST FOR PRODUCTION NO. 5: In your answer to paragraph 21 of Plaintiff's IPPEA Complaint, you state: "Defendants admit that Mr. King was supervised by the Mayor, but he was evaluated by the Mayor and the City Council." Please produce true and complete copies of each and every written evaluation, of any type, conducted by Mayor Willich or Mayor Briscoe and/or the Sun Valley City Council, of Adam King relating to his legal representation of Sun Valley through the date of your response to this Request for Production.

RESPONSE: Defendant responds that there are no written evaluations of Adam King.

REQUEST FOR PRODUCTION NO. 6: Please produce true and complete copies of all written communications or audio recordings of communications between Adam King and Patricia

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 7.

Latham Ball regarding or relating to any of the investigative services Ms. Ball provided to Sun Valley and/or any of the draft or final reports that she prepared for Sun Valley.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines. Subject to these objections, Defendant will produce responsive documents with a confidentiality order as these documents relate to personnel issues.

REQUEST FOR PRODUCTION NO. 7: Please produce true and complete copies of all written communications or audio recordings of communications between Adam King and any other Sun Valley employee or representative regarding or relating to any of the investigative services Patricia Latham Ball provided to Sun Valley and/or any of the draft or final reports that she prepared for Sun Valley.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines.

REQUEST FOR PRODUCTION NO. 8: Please produce a true and complete copy of the investigation report dated on or about December 9, 2011, produced by Patricia Latham Ball and placed in Adam King's custody by Mayor Willich for review by Sun Valley City Council Members.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines.

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 8.

REQUEST FOR PRODUCTION NO. 9: Please produce true and complete copies of each and every governing document that sets forth the duties and obligations of the Sun Valley City Council for the timeframe of 2007 through 2012.

RESPONSE: In response, please see attached Bates stamped documents SV 1926-1939.

REQUEST FOR PRODUCTION NO. 10: Please produce true and complete copies of each and every governing document that sets forth the duties and obligations of Adam King as Sun Valley's legal advisor.

RESPONSE: See response and documents provided with Interrogatory number 3 and Interrogatory number 4.

REQUEST FOR PRODUCTION NO. 11: Please produce true and complete copies of each and every contract for services entered into between Sun Valley, any Sun Valley representative or employee, and Patricia Latham Ball from November 1, 2011, to the date of your response to this Request for Production.

RESPONSE: In response, please see attached Bates stamped documents SV 2011-2012.

REQUEST FOR PRODUCTION NO. 12: Please produce true and complete copies of each and every billing statement or invoice of Patricia Latham Ball to Sun Valley for investigatory services provided during the timeframe of November 1, 2011 through the date of your response to this Request for Production.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by work product doctrines.

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 9.

REQUEST FOR PRODUCTION NO. 13: Please produce true and complete copies of each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by Patricia Latham Ball regarding or relating to Sharon Hammer.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines. Subject to these objections, Defendant will produce responsive documents with a confidentiality order as these documents relate to personnel issues.

REQUEST FOR PRODUCTION NO. 14: Please produce true and complete copies of each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by Patricia Latham Ball regarding or relating to any other Sun Valley employee or representative.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines. Subject to these objections, Defendant will produce responsive documents with a confidentiality order as these documents relate to personnel issues.

REQUEST FOR PRODUCTION NO. 15: Please produce true and complete copies of each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by Patricia Latham Ball regarding or relating to Nils Ribi.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or work product doctrines. Subject to these

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 10.

objections, Defendant will produce responsive documents with a confidentiality order as these documents relate to personnel issues.

REQUEST FOR PRODUCTION NO. 16: Please produce true and complete copies of any and all communications to or from Kirtlan Naylor and Patricia Latham Ball regarding or relating to any of the investigative services Ms. Ball provided to Sun Valley and/or any of the draft or final reports that she prepared for Sun Valley.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and calls for information protected by attorney-client privilege and/or work product doctrines.

REQUEST FOR PRODUCTION NO. 17: Please produce true and complete copies of any and all communications to or from any employee or representative of Sun Valley, other than Mr. King or Mr. Naylor, and Patricia Latham Ball regarding or relating to any of the investigative services she provided to Sun Valley and/or any of the draft or final reports that she prepared for Sun Valley.

RESPONSE: Objection. This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by work product doctrines.

REQUEST FOR PRODUCTION NO. 18: Please produce a true and complete copy of the personnel file of Sharon Hammer as compiled prior to and/or during her employment as City Administrator through the date of your response to this Request for Production.

RESPONSE: Defendant will produce responsive documents with a confidentiality order as these documents relate to personnel issues.

REQUEST FOR PRODUCTION NO. 19: Please produce true and complete copies of all Sun Valley City Council meeting minutes from November 2011 through December 31, 2012.

RESPONSE: In response, please see attached Bates stamped documents SV 2069-2296.

REQUEST FOR PRODUCTION NO. 20: Please produce a true and complete copy of each and every publication or press release placed in the Idaho Mountain Express by Sun Valley regarding or relating to the termination of Sharon Hammer as City Administrator, during the timeframe of November 1, 2011 through the date of your response to this Request for Production.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence. Without waiving these objections, please see attached Bates stamped documents SV 2297-2332.

REQUEST FOR PRODUCTION NO. 21: Please produce true and complete copies of any and all communications to or from any representatives of the Idaho Mountain Express and Sun Valley, regarding or relating to the publications or press releases produced in your response to Request for Production No. 20.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence. Without waiving these objections, please see attached Bates stamped documents SV 2297-2332.

REQUEST FOR PRODUCTION NO. 22: Please produce true and complete copies of any and all communications between Sun Valley representatives (including employees and elected officials) regarding or relating to all draft and final versions of the publications or press releases produced in your response to Request for Production No. 20.

RESPONSE: Objection. This request is excessive, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, full production

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 12.

of the requested documents will be costly and will involve the creation of a privilege log and/or appropriate redactions, and so Defendants object to producing the communications in native format to avoid over-disclosure. Defendants are currently processing the requested emails and creating the applicable privilege log, and will provide these to Plaintiff in a timely fashion.

REQUEST FOR PRODUCTION NO. 23: Please produce a true and complete copy of each and every publication or press release placed in the Idaho Mountain Express by Sun Valley regarding or relating to the "resolution of claims made by other employees," as stated in your answer to paragraph 150 of Plaintiff's IPPEA Complaint.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence. Without waiving these objections, please see attached Bates stamped documents SV 2333-2348; SV 2351-2359; and SV 2367-2378.

REQUEST FOR PRODUCTION NO. 24: Please produce true and complete copies of any and all communications to or from any representatives of the Idaho Mountain Express and Sun Valley, regarding or relating to the publications or press releases produced in your response to Request for Production No. 23.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence. Without waiving these objections, please see attached Bates stamped documents SV 2333-2348; SV 2351-2359; and SV 2367-2378.

REQUEST FOR PRODUCTION NO. 25: Please produce true and complete copies of any and all communications between Sun Valley representatives (including employees and elected officials) regarding or relating to all draft and final versions of the publications or press releases produce in your response to Request for Production No. 23.

RESPONSE: Objection. This request is excessive, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, full production of the requested documents will be costly and will involve the creation of a privilege log and/or appropriate redactions, and so Defendants object to producing the communications in native format to avoid over-disclosure. Defendants are currently processing the requested emails and creating the applicable privilege log, and will provide these to Plaintiff in a timely fashion.

REQUEST FOR PRODUCTION NO. 26: Please produce true and complete copies of any and all communications between any Sun Valley representative(s) and Nils Ribi regarding or relating to Mr. Ribi's website and personal blog, during the timeframe of October 1, 2011 through the date of your response to this Request for Production.

RESPONSE: Objection. This request is excessive, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, full production of the requested documents will be costly and will involve the creation of a privilege log and/or appropriate redactions, and so Defendants object to producing the communications in native format to avoid over-disclosure. Defendants are currently processing the requested emails and creating the applicable privilege log, and will provide these to Plaintiff in a timely fashion.

REQUEST FOR PRODUCTION NO. 27: Please produce true and complete copies of each and every contract for legal services entered into between Sun Valley and Kirtlan Naylor from the beginning of his legal representation of Sun Valley, in or about November 2011, to the date of your response to this Request for Production.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence. Further, this request calls for information protected by attorney-client

privilege doctrine. Without waiving these objections, please see attached Bates stamped documents SV 2379-2410.

REQUEST FOR PRODUCTION NO. 28: Please produce true and complete copies of each and every billing statement or invoice from Kirtlan Naylor to Sun Valley for legal services provided during the timeframe of November 1, 2011 through the date of your response to this Request for Production.

RESPONSE: Objection. This interrogatory is irrelevant and not calculated to lead to admissible evidence and calls for information protected by attorney-client privilege and/or work product doctrines.

REQUEST FOR PRODUCTION NO. 29: Please produce true and complete copies of each and every contract for legal services entered into between Idaho Counties Risk Management Program ("ICRMP") and Kirtlan Naylor related to Mr. Naylor's legal representation of Sun Valley, in or about November 2011, to the date of your response to this Request for Production.

RESPONSE: This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and requests documents not in Defendant's possession. Further, this request calls for information protected by attorney-client privilege and/or the work product doctrines. Without waiving said objections, there are no documents responsive.

REQUEST FOR PRODUCTION NO. 30: Please produce true and complete copies of each and every billing statement or invoice from Kirtlan Naylor to ICRMP for legal services provided relating to Sun Valley, during the timeframe of November 1, 2011 through the date of your response to this Request for Production.

RESPONSE: This request is not relevant overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and requests documents not

DEFENDANT CITY OF SUN VALLEY'S DISCOVERY RESPONSES - 15.

in Defendant's possession. Further, this request calls for information protected by attorney-client privilege and/or the work product doctrines. Without waiving said objections, there are no documents responsive.

REQUEST FOR PRODUCTION NO. 31: Please produce true and complete copies of all written communications or audio recordings of communications between Kirtlan Naylor and Patricia Latham Ball regarding or relating to any of the investigative services Ms. Ball provided to Sun Valley and/or any of the draft or final reports that she prepared for Sun Valley.

RESPONSE: This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this request calls for information protected by attorney-client privilege and/or the work product doctrines.

REQUEST FOR PRODUCTION NO. 32: Please produce true and complete copies of all email communications (in native format) to Sun Valley City Clerk Kelly Ek from Sun Valley, and vice versa, during the timeframe of June 1, 2008 through the date of your response to this Request for Production.

RESPONSE: Objection. This request is excessive, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from/to a non-person, and as such is incomprehensible.

REQUEST FOR PRODUCTION NO. 33: Please produce true and complete copies of all email communications (in native format) to Sun Valley City Treasurer Michelle Frostenson from Sun Valley, and vice versa, during the timeframe of June 1, 2008 through the date of your response to this Request for Production.

RESPONSE: Objection. This request is excessive, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it seeks documents from/to a non-person, and as such is incomprehensible.

REQUEST FOR PRODUCTION NO. 34: Please produce true and complete copies of any and all written documents pertaining to the requirement that the City Administrator actually prepare formal, written time cards for submission every pay period.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 35: Please produce true and complete copies of the time cards for Virginia Egger, through September 2012.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 36: Please produce true and complete copies of the time cards for Bob Van Nort, through 2007.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 37: Please produce true and complete copies of the time cards for Jerry Osterman, through 2008.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 38: Please produce true and complete copies of the time cards for Sharon Hammer, through January 2012.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 39: Please produce true and complete copies of the time cards for Susan Robertson, through the date of your response to this Request for Production.

RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

REQUEST FOR PRODUCTION NO. 40: Please produce true and complete copies of the time cards for Michael Parda, through December 2012.

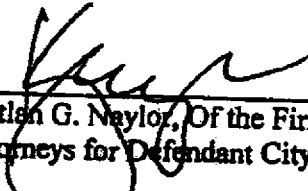
RESPONSE: Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Defendant responds that

there is no formal requirement for a city administrator to provide formal time cards pursuant to the Sun Valley Employment Manual, and there are no documents responsive.

DATED this 17th day of May, 2013.

NAYLOR & HALES, P.C.

By

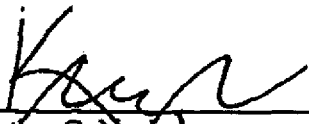

Kirtlan G. Naylor, Of the Firm
Attorneys for Defendant City of Sun Valley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of May, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☒ Hand Delivered
☐ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Kirman G. Nayton

M:\CRM\Plaintiff v. Sun Valley\Hearings & Court\CV12-479 (Hearings) WB 2012\0406_14 Draft Responses to Pfs 1st ROGS, RFP_FINAL.wpd

EXHIBIT B
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
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AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

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Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
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joy@jonesandswartzlaw.com
Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**SUBPOENA TO PRODUCE
DOCUMENTS, INFORMATION,
OR OBJECTS**

TO: PATRICIA LATHAM BALL, INDIVIDUALLY AND
ON BEHALF OF MANAGEMENT NORTHWEST

You, Patricia Latham Ball, are commanded to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, including but not limited to all notes, whether hand written or electronic; emails and attachments; letters, in draft or final form; memoranda, in draft or final form; investigation materials; reports, in draft or final form; written determinations; correspondence; audio recordings; photographs; ledgers; invoices; and other tangible things regarding or related to:

SUBPOENA TO PRODUCE DOCUMENT, INFORMATION, OR OBJECTS - 1

1. Each and every contract for services entered into between you and Sun Valley, or any City of Sun Valley, Idaho ("Sun Valley") representative, from October 1, 2011, to the date of your response to this Request for Production.

2. Each and every billing statement or invoice by you to Sun Valley for investigatory services provided during the timeframe of October 1, 2011, through the date of your response to this Request for Production.

3. Each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by you regarding or relating to Sharon Hammer.

4. Each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by you regarding or relating to Nils Ribi.

5. Each and every draft and final version of any report, investigative or otherwise, including all exhibits or attachments, prepared by you regarding or relating to any Sun Valley employee or representative, other than Sharon Hammer and Nils Ribi.

6. Any and all communications (emails in native format) to or from you and Wayne Willich regarding or relating to any of the investigative services you provided to Sun Valley, and/or any of the draft or final reports that you prepared for Sun Valley.

7. Any and all communications (emails in native format) to or from you and Adam King regarding or relating to any of the investigative services you provided to Sun Valley, and/or any of the draft or final reports that you prepared for Sun Valley.

8. Any and all communications (emails in native format) to or from you and Dewayne Briscoe regarding or relating to any of the investigative services you provided to Sun Valley, and/or any of the draft or final reports that you prepared for Sun Valley.

9. Any and all communications (emails in native format) to or from you and Nils Ribi regarding or relating to any of the investigative services you provided to Sun Valley, and/or any of the draft or final reports that you prepared for Sun Valley.

10. Any and all communications (emails in native format) to or from you and Kirtlan Naylor regarding or relating to any of the investigative services you provided to Sun Valley, and/or any of the draft or final reports that you prepared for Sun Valley.

11. Any and all communications (emails in native format) to or from any employee or representative of Sun Valley, other than those listed in Requests 6 through 10, and you regarding or relating to any of the investigative services you provided to Sun Valley and/or any of the draft or final reports that you prepared for Sun Valley.

12. The investigation report dated, on or about, December 9, 2011, produced by you and provided to Wayne Willich.

13. The investigation report dated, on or about, December 20, 2011, produced by you and provided to Kirtlan Naylor or other Sun Valley representatives.

14. Any and all communications (emails in native format) to or from you and the Blaine County Prosecutor's Office, including but not limited to Jim Thomas regarding any investigation on behalf of Sun Valley.

15. Any and all communications (emails in native format) to or from you and the Idaho Attorney General's Criminal Investigation Unit, including but not limited to Scott Birch regarding any investigation on behalf of Sun Valley.

16. Any and all communications (emails in native format) to or from you and Hagen Streiff Newton & Oshiro regarding any investigation on behalf of Sun Valley.

17. Any and all communications (emails in native format) to or from you and Moffatt Thomas Barrett Rock & Fields Chtd. regarding any investigation on behalf of Sun Valley.

In producing documents, you must produce a copy of each as they are kept in the ordinary course of business, or you must organize and label them to correspond to the categories in this demand. In producing electronically stored information, you must produce it in a form or forms in which it is ordinarily maintained or in a reasonably useable form or forms, such as native format saved to a CD. You need not produce the same electronically stored information in more than one form. In producing electronically stored information, you need not provide discovery of electronically stored information from sources that you identify as being not reasonably accessible because of undue burden or cost. It will be your burden to show that the information is not reasonably accessible because of undue burden or cost.

If you withhold subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material, you must expressly make the claim and describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. If information produced in response to this subpoena is subject to a claim of privilege or of

protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

The Plaintiff's attorney is responsible for issuing and serving this subpoena and must take reasonable steps to avoid imposing undue burden or expense on you, the person or organization subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction on the Plaintiff's attorney if they fail to comply. The following accommodations have been made in order minimize any potential undue burden or expense:

You may comply with this Subpoena without appearing in person at the offices of Jones & Swartz PLLC on Monday, the 18th day of June, 2013, at 11:00 o'clock a.m., by mailing the requested information to Jones & Swartz PLLC, P.O. Box 7808, Boise, ID 83707-7808, postmarked by Friday, June 14, 2013, AND by completing and having notarized the Certificate on page 6 of this Subpoena.

If you fail to appear at the place and time specified above, or if you fail to produce the materials referenced above, you may be held in contempt of court and subject to sanctions in amounts equal to those damages sustained by your failure to comply with this subpoena.

///

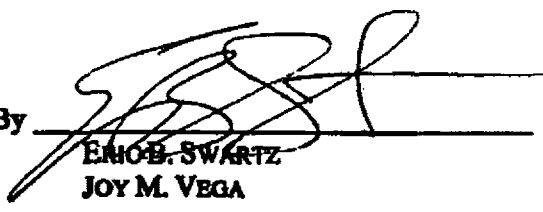
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///

As an officer of the Court, pursuant to Rule 45(a)(3), this 6th day of May, 2013.

JONES & SWARTZ PLLC

By



ENOCH B. SWARTZ
JOY M. VEGA

**CERTIFICATE OF PATRICIA LATHAM BALL, INDIVIDUALLY
OR ON BEHALF OF MANAGEMENT NORTHWEST
FURNISHING DOCUMENTS IN LIEU OF LIVE TESTIMONY**

I Patricia Latham Ball, individually or on behalf of Management Northwest, hereby certifies that the attached constitutes a full and complete response to the Subpoena Duces Tecum served upon me. The attached consists of _____ pages, or _____ number of documents, and _____ audio recordings. This Certificate and the attachments are furnished in lieu of appearance for deposition.

Dated this _____ day of _____, 2013.

PATRICIA LATHAM BALL

STATE OF IDAHO)
 : ss.
County of _____)

On this _____ day of _____, 2013, before me, a notary public for said state, personally appeared _____, known or identified to me to be the _____ of the organization that executed the within instrument or the person who executed the within instrument on behalf of said organization, and acknowledged to me that such organization executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for _____
My Commission expires: _____

EXHIBIT C
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT C
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA



NAYLOR & HALES, P.C.
ATTORNEYS AT LAW

KIRTLAN G. NAYLOR

Direct Line: 947-2070
E-mail: kirt@naylorhales.com

Kirtlan G. Naylor
Roger J. Hales
Bruce J. Castleton
James R. Stoll
Eric F. Nelson
David Sasser
Jacob H. Naylor
Tyler D. Williams

Of Counsel
Robert G. Hamlin
James D. Carlson

June 24, 2013

Eric Swartz
Jones & Swartz, PLLC
1673 W. Shoreline Dr., Suite 200
Boise, ID 83702

Via Send Now

Re: Hammer v. City of Sun Valley, et al.
Blaine County Case No: CV12-479

Dear Mr. Swartz:

As you have been advised, this firm represents Patti Ball regarding the subpoena you served her. Attached are the responsive documents to the subpoena issued to Patti Ball on May 6, 2013. As Ms. Ball was an agent of the City of Sun Valley in her capacity as an independent investigator, we are producing these documents on her behalf and as her legal counsel in this matter, and this response constitutes her compliance with the served subpoena.

The following are detailed descriptions of the documents, privileges, and objections to your numbered paragraphs in the subpoena requests of Ms. Ball:

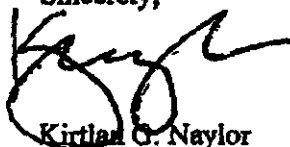
1. As responsive documents, please see attached SV 2011-2012.
2. As responsive documents, please see attached BALL 356, 359-362, 364, 366.
3. Defendants object at this time and assert work product privilege and to maintain the privacy of personnel matters. Once a protective order is issued, these documents will be produced (BALL 001-354, 1696-1720, 1721-1751.) As a note of clarification, prior to the final December 20, 2011 reports, the draft reports of December 9, 2011 and December 12, 2011, were in a

- consolidated form. Therefore, the responsive draft reports for multiple requests are duplicative, and will be produced only once.
4. As responsive documents, please see Defendants response and objections to subpoena request #3.
 5. As responsive documents, please see Defendants response and objections to subpoena request #3.
 6. As responsive documents, please see attached BALL 1643-1655. However, Defendants object to producing emails in native format as the logistics of doing so would be overly burdensome.
 7. There are no unprivileged documents or communications responsive to this request. Please reference the attached privilege log for each existing communication and the associated privilege asserted.
 8. There are no unprivileged documents or communications responsive to this request. Please reference the attached privilege log for each existing communication and the associated privilege asserted.
 9. As responsive documents, please see attached BALL 1656-1695. However, Defendants object to producing emails in native format as the logistics of doing so would be overly burdensome and lead to the release of privileged information and communications. Additionally, certain attachments within these communications contain attorney client communications, and are indicated via redaction as to their specific nature.
 10. There are no unprivileged documents or communications responsive to this request. Please reference the attached privilege log for each existing communication and the associated privilege asserted.
 11. As responsive documents, please see attached BALL 1439-1639. However, Defendants object to producing emails in native format as the logistics of doing so would be overly burdensome.
 12. As responsive documents, please see responses and objections to subpoena requests #3-5.
 13. As responsive documents, please see responses and objections to subpoena requests #3-5.
 14. There are no responsive documents to this request.
 15. As responsive documents, please see attached BALL 1640-1642 & BALL 1752. In addition, please refer to the attached privilege log for other communications which are privileged and the associated privilege asserted.
 16. There are no responsive documents to this request.
 17. There are no responsive documents to this request.

Eric Swartz
June 24, 2013
Page 3

We are providing stipulations for state and federal court proceedings for protective orders consistent with our prior discussions. Once the stipulations are authorized, we will file and upon the Court's order, we will produce the affected documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirtlan G. Naylor", with a large, stylized initial "K" and a long horizontal stroke extending to the right.

Kirtlan G. Naylor

KGJ:gw

Encs.

cc: Clients w/out Encs.

M:\CRMP\Hammer v. Sun Valley\Letters\2406 Swartz 03.wpd

MANAGEMENT NORTHWEST

916 Wyndemere Drive - Boise, ID 83702

Ph: 208-342-7342 Fax: 208-975-7805

<http://www.mnwlegal.com/>

Patricia Latham Ball Esq.

pbalk@mnwlegal.com

November 23, 2011

Mayor Wayne Willich
City of Sun Valley

Re: Engagement Letter for City of Sun Valley Investigation

Sent via Email

Dear Mayor Willich,

By signing and dating below, this letter serves as your engagement of the undersigned to conduct a fact-finding investigation on behalf of the City of Sun Valley. No retainer will be required in this regard.

City of Sun Valley will be billed at an hourly rate of \$240 for all work conducted. Travel time from Boise to Sun Valley will be billed at 1/2 the hourly rate plus IRS-designated mileage. The City of Sun Valley will also be responsible for the reimbursement of all reasonable and necessary business expenses incurred during the course of the investigation, including but not limited to mileage, hotel, meals, parking fees and printing costs.

The control group for purposes of all communications relating to the investigation will include City Attorney Adam King, Mayor-Elect Dwayne Briscoe and Mayor Willich.

It is also my understanding that you will arrange all witness interviews as requested by the undersigned. Interviews will be conducted on November 28, 2011 and November 29,

2011, at the law office of Hawley Troxell, located at 126 Main Street South, Suite B-4, Hailey, Idaho. A written report will be prepared after the interviews are conducted.

Please sign and date below and return to the undersigned via email or fax. My cell phone number is 208-2226.

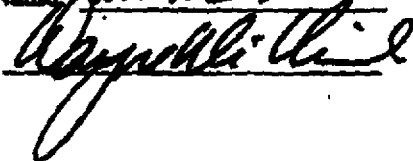
Sincerely,



Patricia Latham Ball, Esq.

Dated: 11/23/2011

Printed Name: WAYNE WILGICH

Signed: 

cc: Adam King, Dwayne Brisco

Management Northwest - Patricia Latham Ball, Esq.
916 Wyndemere Drive
Bellingham, WA 98201
Phone: 360.837.0022

Invoice submitted to:
City of Sun Valley - Attention: Tammi Hall

January 04, 2012

Invoice #14569

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
11/17/2011 PLB Telephone conference with Adam King	0.30 240.00/hr	NO CHARGE
11/18/2011 PLB Telephone conference with Adam King and Mayor	0.40 240.00/hr	NO CHARGE
11/21/2011 PLB Telephonic interview and briefing with client; Telephone call from client	1.60 240.00/hr	NO CHARGE
11/22/2011 PLB Emails to and from client; Prepare and send tentative interview schedule	0.40 240.00/hr	96.00
11/23/2011 PLB Prepare engagement letter	0.30 240.00/hr	NO CHARGE
PLB Telephone call from King	0.20 240.00/hr	48.00
PLB Prepare email to Mayor regarding interview schedule; Review voicemails from Mayor; Prepare email regarding witness list; Review voicemail and letter from Hammer's counsel; Review file; Prepare email to client regarding parameters of investigation; Prepare Day two interview schedule; Telephone conference with attorney Miller regarding conference room usage; Review emails from King regarding documentation	1.90 240.00/hr	456.00
11/24/2011 PLB Review emails from client and Kirt Naylor	0.20 240.00/hr	48.00

		<u>Hrs/Rate</u>	<u>Amount</u>
11/25/2011	PLB Review and reply to emails by and between WW, KN and DB; Prepare email to client regarding scope of investigation	1.10 240.00/hr	264.00
11/26/2011	PLB Emails to and from client	0.20 240.00/hr	48.00
11/27/2011	PLB Review file; Prepare for interviews	1.50 240.00/hr	360.00
11/28/2011	PLB Travel from Boise to Halley; Travel from Halley to Sun Valley Lodge Billed at half time	3.20 120.00/hr	384.00
	PLB Confer with Mayor; Telephone conference with Naylor; Conduct Interviews; Confer with Hammer's attorney; Confer with Naylor; Prepare for day two interviews	7.40 240.00/hr	1,776.00
11/29/2011	PLB Travel to Halley from Sun Valley; Return trip Half-time billed	0.80 120.00/hr	96.00
	PLB Prepare for Day Two Interviews; Review Day 1 notes; Conduct full day of interviews; Confer with client; Evening: Status call to Naylor; Review documents from witnesses; Review emails from client and witnesses; Calls to and from Naylor regarding Prior and interview schedule; Prepare for Day Three interviews	10.50 240.00/hr	2,520.00
11/30/2011	PLB Prepare for interviews; Conduct interviews; Telephone conference to and from Naylor; Emails from Hammer's attorney; Email from client	4.20 240.00/hr	1,008.00
	PLB Travel from Sun Valley to Boise Half time billed	2.80 120.00/hr	336.00
12/1/2011	PLB Emails to and from Hammer; Review additional documentation provided by Hammer; Emails to and from Mayor; Emails from King; Review documentation; Emails regarding expanded scope of investigation to include Fire Department complaints; Review emails to and from client	2.10 240.00/hr	504.00
12/2/2011	PLB Telephone conference with client; Prepare request for documents for expanded scope of investigation; Telephone conference with Naylor; Provide status update to client; Emails from King regarding documents requested; Emails from Ribi regarding documentation	2.30 240.00/hr	552.00
12/3/2011	PLB Telephone conference with Naylor; Travel to and receive documents; Review file	1.20 240.00/hr	288.00
12/4/2011	PLB Review documents; Review emails	1.80 240.00/hr	432.00

		<u>Hrs/Rate</u>	<u>Amount</u>
12/5/2011	PLB Travel to and meet with Frostenson to conduct interview relating to Fire Department; Review City documents with Frostenson; Confer with Naylor; Review credit card documents with Frostenson	9.50 240.00/hr	2,280.00
	PLB Post-interviews: Conduct extensive review of time records, time cards, payroll reports, witness notes and other Fire Department time record documentation; Cross-check payroll to time reports; Cross-check time reports to handwritten time card totals	5.50 240.00/hr	1,320.00
12/6/2011	PLB Review file; Telephonic follow-up interview with Mal Prior; Telephonic interview of Ray Franco; Follow-up telephonic interview with Ek; Telephone call to Naylor	3.50 240.00/hr	840.00
	PLB Conduct extensive review of credit card invoices for City Administrator and Fire Chief; Emails to and from Hall, Hammer, Willich, Naylor, Ek, King	6.50 240.00/hr	1,560.00
12/7/2011	PLB Review emails from witness Ek; Review documents; Review witness notes; Commence preparation of investigative report; Review documents provided by Hall; Review all documents and commence selecting Exhibits for report; Cross-compare exhibits to report details; Summarize witness notes; Continue preparation of first draft report; Conduct telephonic interview of Adam King; Confer with Naylor; Emails to and from Naylor	8.20 240.00/hr	1,968.00
12/8/2011	PLB Numerous emails to and from Hall regarding document collection; Review documents; Continue preparation of investigative report; Review and prepare exhibits and exhibit lists; Numerous emails to and from Naylor; Emails to and from Hall; Research law; Review client policy manual; Review exhibits and exhibit list	13.50 240.00/hr	3,240.00
12/9/2011	PLB Review and revise report; Emails to and from Naylor; Telephone conference with Naylor	4.40 240.00/hr	1,056.00
12/11/2011	PLB Review and revise draft investigative report; Review exhibit list	3.20 240.00/hr	768.00
12/12/2011	PLB Final review of report; Finalize exhibits; Travel to and participate in telephonic meeting; Review recorded interview; Emails to and from client	5.20 240.00/hr	1,248.00
12/13/2011	PLB Review emails from Prior; Telephone conference with Naylor; Email to Prior; Revise report; Email to and from Mayor	0.60 240.00/hr	144.00
12/15/2011	PLB Review email from Prior; Telephone call to Naylor; Email to Prior	0.30 240.00/hr	72.00
12/16/2011	PLB Emails to and from Naylor	0.40 240.00/hr	96.00

	<u>Hrs/Rate</u>	<u>Amount</u>
12/17/2011 PLB Email from Naylor; Telephone conference with Naylor	0.40 240.00/hr	96.00
12/19/2011 PLB Review Hammer tape; Emails to and from Naylor regarding report	1.70 240.00/hr	408.00
12/20/2011 PLB Review Prior tape; Review and revise three investigative reports; Emails to and from Naylor; Finalize reports; Add exhibits	2.90 240.00/hr	696.00
1/3/2012 PLB Telephone call from Tammi; Return call to Kirt	0.20 240.00/hr	NO CHARGE
For professional services rendered	110.40	\$25,008.00
Additional Charges :		
11/28/2011 Sun Valley Lodging and Meals		395.43
Lunch - Shorty's		12.00
Mileage from Boise office to Hailey conference room then Sun Valley Lodge - 157.5 x \$.51		80.33
Breakfast		7.50
11/29/2011 Breakfast		7.88
Mileage from Hailey to Sun Valley and return trip - 27 x \$.51		13.77
Dinner - 18.89		18.89
11/30/2011 Mileage from Sun Valley to Boise - 157.5 x \$.51		80.33
Breakfast/Lunch - Shorty's		11.50
12/5/2011 Best Western Vista Inn at the Airport: Hotel Conference Room for Frostenson interview; Hotel-provided Lunch for Meeting; Hotel photocopy charge		124.84
12/20/2011 Copying cost 412 at .08		32.96
Total costs		<u>\$785.43</u>
Total amount of this bill		<u>\$25,793.43</u>
Balance due		<u>\$25,793.43</u>

EXHIBIT D
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
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AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
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PRIVILEGE LOG
ADAM KING ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Adam B. King	'Patti Latham Ball'		11/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 368-370
Adam B. King	'Patti Latham Ball'		11/22/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 373-421
Patti Latham Ball	wwillich@svidaho.org	Adam B. King	11/22/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 429
Adam B. King	'Patti Latham Ball'		11/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 433
Wayne Willich	Patti Latham Ball	Adam B. King	11/22/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 522
Patti Latham Ball	wwillich@svidaho.org	Adam B. King; Dwayne Brisco External	11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 372
Patti Latham Ball	wwillich@svidaho.org	'Dwayne Brisco External'; Adam B. King	11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 425-427
Patti Latham Ball	wwillich@svidaho.org; Dwayne Brisco External; Adam B. King		11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 430
Adam King	pball@mnwlegal.com		11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 432
Wayne Willich	Patti Latham Ball	Dwayne Brisco External; Adam B. King	11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 518
Patti Latham Ball	'Wayne Willich'	'Adam B. King'; 'Dwayne Brisco External'	11/23/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 523-524
Wayne Willich	Patti Latham Ball	Dwayne Brisco External; Adam B. King	11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 519
pball@mnwlegal.com	dewayne		11/28/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 500
dewayne	Patti Latham Ball		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 428
Patti Latham Ball	Adam B. King		11/30/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 422
Adam B. King	wwillich@svidaho.org	'Patti Latham Ball'	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 371
Adam B. King	wwillich@svidaho.org	'Patti Latham Ball'	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 431
Wayne Willich	Adam B. King	Patti Latham Ball	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 434-499
Patti Ball	Adam B. King		12/5/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 525-526
Adam B. King	'Patti Ball'		12/5/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 527-528

PRIVILEGE LOG
ADAM KING ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Adam B. King	wwillich@svidaho.org; 'Tammi Hall'	'Patti Latham Ball'	12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 423-424
pball@mnwlegal.com	Adam B. King; wwillich@svidaho.org; 'Tammi Hall'		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 501
Tammi Hall	pball@mnwlegal.com		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 502-503
Patti Latham Ball	'Tammi Hall'	wwillich@svidaho.org	12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 504-505
Tammi Hall	Patti Latham Ball	Wayne Willich	12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 506-507
Wayne Willich	pball@mnwlegal.com		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 508-509
Patti Latham Ball	'Wayne Willich'		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 510-511
Wayne Willich	Patti Latham Ball		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 512-514
Patti Latham Ball	'Wayne Willich'	Adam B. King	12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 515-517
Adam B. King	'Patti Latham Ball'		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 520-521
Kelly Ek	Patti Latham Ball'	Adam B. King; Dwayne Brisco External	12/7/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 1461-1463
Kelly Ek	Patti Latham Ball'	Adam B. King; 'Wayne Willich'	12/7/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 1458-1459
pball@mnwlegal.com	Adam B. King	'Wayne Willich'	12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 529
pball@mnwlegal.com	Adam B. King		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 530
pball@mnwlegal.com	Adam B. King		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 531
Adam B. King	pball@mnwlegal.com		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 532
Wayne Willich	pball@mnwlegal.com; Adam B. King		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 533
Adam B. King	'Wayne Willich'; pball@mnwlegal.com		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 534-535
pball@mnwlegal.com	Wayne Willich; Adam B. King		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 536-537
Wayne Willich	pball@mnwlegal.com; Adam B. King		12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 538-539

PRIVILEGE LOG
ADAM KING ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Adam B. King	'Patti Latham Ball'	'Wayne Willich'	12/22/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 541
Patti Latham Ball	'Adam B. King'		1/21/2012	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - ADAM KING	BALL 540

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Wayne Willich	Patti Latham Ball		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 691
Kirtlan Naylor	Patti Latham Ball		11/28/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 711
pball@mnwlegal.com	Nils@nilsribi.com		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 782
Nils@nilsribi.com	pball@mnwlegal.com		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 783
pball@mnwlegal.com	Nils@nilsribi.com		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 784
Nils@nilsribi.com	Kirtlan Naylor; pball@mnwlegal.com		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 855-856
Patti Latham Ball	Kirtlan Naylor		11/30/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 726
Patti Latham Ball	Kirtlan Naylor		12/2/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 645-646
Patti Latham Ball	Kirtlan Naylor		12/2/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 709
Patti Latham Ball	Kirtlan Naylor		12/2/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 850
Patti Latham Ball	Kirtlan Naylor		12/3/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 710
pball@mnwlegal.com	Kirtlan Naylor		12/3/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 738
Kirtlan Naylor	Patti Latham Ball		12/3/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 739
Patti Latham Ball	Kirtlan Naylor		12/4/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 849

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Patti Latham Ball	'Kirtlan Naylor'		12/5/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 724
pball@mnwlegal.com	Kirtlan Naylor		12/5/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 725
Kirtlan Naylor	Patti Ball		12/5/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 891
Patti Latham Ball	Kirtlan Naylor		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 848
Patti Latham Ball	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 749
Kirtlan Naylor	Patti Latham Ball		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 750-751
Patti Latham Ball	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 752
Patti Latham Ball	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 753-754
Kirtlan Naylor	Patti Latham Ball		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 755-756
Patti Latham Ball	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 757-758
Patti Latham Ball	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 759-760
pball@mnwlegal.com	Kirtlan Naylor		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 761
Kirtlan Naylor	Patti Ball (pball@managementnorth west.com)		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 847
Patti Latham Ball	Kirtlan Naylor		12/9/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 618-644

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Patti Latham Ball	Kirtlan Naylor		12/9/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 736
Kirtlan Naylor	Patti Latham Ball		12/9/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 737
Patti Latham Ball	Kirtlan Naylor		12/9/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 854
pball@mnwlegal.com	Kirtlan Naylor		12/9/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 890
Patti Latham Ball	Kirtlan Naylor	wwillich@svidaho.org	12/11/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 765
Patti Latham Ball	Kirtlan Naylor		12/12/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 542-551
Patti Latham Ball	Kirtlan Naylor		12/12/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 648-679
pball@mnwlegal.com	Kirtlan Naylor		12/12/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 727
Patti Latham Ball	Kirtlan Naylor		12/12/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 728
pball@mnwlegal.com	Wayne Willich		12/12/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 762-763
Wayne Willich	Patti Latham Ball		12/12/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 764
Patti Latham Ball	Kirtlan Naylor		12/13/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 706-707
Patti Latham Ball	Kirtlan Naylor		12/13/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 712
Patti Latham Ball	Kirtlan Naylor		12/15/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 708

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
pball@mnwlegal.com	Kirtlan Naylor		12/16/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 723
pball@mnwlegal.com	Kirtlan Naylor	Stacey Ihler; Jake Naylor; Dave Sasser	12/16/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 776-777
pball@mnwlegal.com	Kirtlan Naylor		12/16/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 778-779
pball@mnwlegal.com	Kirtlan Naylor		12/16/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 780-781
Kirtlan Naylor	Patti Latham Ball	Stacey Ihler; Jake Naylor; Dave Sasser	12/16/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 853
Kirtlan Naylor	pball@mnwlegal.com		12/17/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 772-773
Kirtlan Naylor	pball@mnwlegal.com		12/17/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 774-775
Kirtlan Naylor	Patti Latham Ball		12/19/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 797-845
Patti Latham Ball	Kirtlan Naylor		12/19/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 846
Patti Latham Ball	Kirtlan Naylor		12/19/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 858-889
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 552-557
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 563-577
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 578-607
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 608-614

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 647
Kirtlan Naylor	Patti Latham Ball		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 729
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 785-786
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 787-788
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 789-790
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 791-792
Kirtlan Naylor	Patti Latham Ball		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 793-794
Patti Latham Ball	Kirtlan Naylor		12/20/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 795-796
Nils@nilsribi.com	Kirtlan Naylor; Patti Ball		12/23/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 713-714
Patti Latham Ball	Kirtlan Naylor		3/7/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 561
Kirtlan Naylor	Patti Latham Ball	Stacey Ihler; Birch, Scott	3/7/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 562
Patricia Latham Ball	Kirtlan Naylor		3/7/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 617
Patti Latham Ball	Dwayne Brisco External; nils@nilsribi.com		7/25/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 696 -700
Patti Latham Ball	Kirtlan Naylor		7/25/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 857

605

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Kirtlan Naylor	Patti Latham Ball	Stacey Ihler; Jake Naylor	8/7/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 683-687
Patti Latham Ball	Kirtlan Naylor		8/7/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 851
Kirtlan Naylor	Patti Latham Ball		8/10/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 701-702
Patti Latham Ball	Kirtlan Naylor		8/11/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 705
Patricia Latham Ball	Kirtlan Naylor		8/11/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 731-733
Patti Latham Ball	Kirtlan Naylor		8/11/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 734-735
Patti Latham Ball	Kirtlan Naylor		8/11/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 770
Kirtlan Naylor	Patricia Latham Ball		8/14/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 768-769
Patti Latham Ball	Kirtlan Naylor		8/17/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 558-560
Kirtlan Naylor	Patti Ball	Jake Naylor; Stacey Ihler	8/19/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 852
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 680-682
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 689
Kirtlan Naylor	Patti Ball		8/20/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 692-695
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 703-704

PRIVILEGE LOG
KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	PRIVILEGE	BATES-Number
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 730
Patti Latham Ball	Kirtlan Naylor	Jake Naylor; Stacey Ihler	8/20/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 771
Kirtlan Naylor	Patti Latham Ball	Stacey Ihler; Jake Naylor	10/25/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 715-722
Kirtlan Naylor	Patti Latham Ball		11/8/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 740-741
Kirtlan Naylor	Clay Gill	dewayne; Michael Parda; Ball Patti Latham; Jake Naylor	11/30/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 766-767
Kirtlan Naylor	Patti Latham Ball		12/4/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 688
Kirtlan Naylor	Tyler Williams; Jake Naylor	Patti Latham Ball	12/4/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 690
Patti Latham Ball	Kirtlan Naylor		12/4/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 742-744
Kirtlan Naylor	Patti Latham Ball		12/4/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 745-746
Kirtlan Naylor	Patti Latham Ball		12/4/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 747-748
Kirtlan Naylor	Birch, Scott	Patti Ball; Stacey Ihler; Jake Naylor	12/13/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KIRTLAN NAYLOR	BALL 615-616

PRIVILEGE LOG
ADAM KING AND KIRTIAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Adam B. King	pball@mnwlegal.com		11/17/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1223
Adam B. King	'Patti Latham Ball'		11/22/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1078-1141
Kirtlan Naylor	Adam B. King; 'Patti Latham Ball'; wwillich@svidaho.org; 'Dwayne Brisco External'		11/24/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1074-1075
Adam B. King	'Patti Latham Ball'; wwillich@svidaho.org; 'Dwayne Brisco External'	Kirtlan Naylor	11/24/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1076-1077
Kirtlan Naylor	Wayne Willich	Patti Latham Ball; Adam B. King; Dwayne Brisco External	11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1064-1066
Kirtlan Naylor	Patti Latham Ball; 'Wayne Willich'; 'Adam B. King'; 'Dwayne Brisco External'		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1067-1069
pball@mnwlegal.com	Wayne Willich		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1070-1071
Kirtlan Naylor	Wayne Willich; Adam B. King; Patti Latham Ball; Dwayne Brisco External		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1072-1073
Kirtlan Naylor	Patti Latham Ball; wwillich@svidaho.org; Adam B. King		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1160-1163
dewayne	Patti Latham Ball; wwillich@svidaho.org; Adam B. King; Kirtlan Naylor		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1164-1167
Patti Latham Ball	wwillich@svidaho.org; Dwayne Brisco External; Adam B. King; Kirtlan Naylor		11/25/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1168-1171
pball@mnwlegal.com	Wayne Willich; Kirtlan Naylor	Adam B. King	11/26/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1154-1159

PRIVILEGE LOG
ADAM KING AND KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
pball@mnwlegal.com	Wayne Willich		11/28/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1061-1063
Kirtlan Naylor	Patti Latham Ball		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 935
Adam B. King	'Patti Latham Ball'; Kirtlan Naylor		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 936
Patti Ball	Kirtlan Naylor		11/29/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 939-941
pball@mnwlegal.com	Adam B. King		11/29/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1148-1153
pball@mnwlegal.com	Adam B. King		11/30/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1142-1147
Kirtlan Naylor	Patti Latham Ball	Adam B. King; Dewayne Briscoe; Wayne Willich	11/30/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1753
Adam B. King	'Patti Latham Ball'; Kirtlan Naylor		12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 900
Adam B. King	pball@mnwlegal.com; Kirtlan Naylor		12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 946-1042
Patti Latham Ball	'Adam B. King'; Kirtlan Naylor		12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1172-1174
Patti Latham Ball	Kirtlan Naylor		12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1189-1195
Patti Latham Ball	'Adam B. King'	Kirtlan Naylor	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1196-1202
Patti Latham Ball	'Adam B. King'	Kirtlan Naylor	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1203-1209
Kirtlan Naylor	Adam B. King	pball@mnwlegal.com	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1210-1216

PRIVILEGE LOG
ADAM KING AND KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Adam B. King	pball@mnwlegal.com	Kirtlan Naylor	12/1/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1224-1402
Adam B. King	Kirtlan Naylor; 'Patti Latham Ball'		12/2/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 901-906
Patti Latham Ball	Kirtlan Naylor		12/2/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1181-1188
Adam B. King	'Patti Latham Ball'; Kirtlan Naylor		12/5/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 907-908
Adam B. King	'Patti Latham Ball'	Kirtlan Naylor	12/5/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1043
Kirtlan Naylor	Adam B. King; 'Patti Latham Ball'		12/5/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1053
Patti Latham Ball	Kirtlan Naylor; Adam B. King		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 899
Patti Latham Ball	Kirtlan Naylor		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 909-910
Kirtlan Naylor	Adam B. King	Stacey Ihler	12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 933
pball@mnwlegal.com	Kirtlan Naylor; Adam B. King		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1046
pball@mnwlegal.com	Adam B. King		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1047
Adam B. King	'Patti Latham Ball'; Kirtlan Naylor		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1048
pball@mnwlegal.com	Adam B. King		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1049-1050
Adam B. King	'Patti Latham Ball'; Kirtlan Naylor		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1051

PRIVILEGE LOG
ADAM KING AND KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Patti Latham Ball	'Adam B. King'; Kirtlan Naylor		12/6/2011	Factual Request	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1052
Adam B. King	Kirtlan Naylor	'Patti Latham Ball'	12/7/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 934
Patti Latham Ball	Kirtlan Naylor; Adam B. King		12/8/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 942
Patti Latham Ball	Kirtlan Naylor	Adam B. King; wwillich@svidaho.org; Dwayne Brisco External	12/12/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 898
Wayne Willich	Patti Latham Ball; Kirtlan Naylor	Adam B. King; Dwayne Brisco External	12/13/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1044
Adam B. King	'Patti Latham Ball'		12/13/2011	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1045
Patti Latham Ball	'Kirtlan Naylor'	'Adam B. King'	7/23/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1180
Patti Latham Ball	Kirtlan Naylor	Adam B. King	7/23/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1217-1220
Kirtlan Naylor	Patti Latham Ball	Adam King; Virginia Egger; Keith Roark; nils@nilsribl.com; Jake Naylor; Stacey Ihler	7/25/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 892-895
Patti Latham Ball	'Adam King'; Dwayne Brisco External; Kirtlan Naylor		7/25/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1177-1178
Patricia Latham Ball	Adam King		7/25/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1179
Patricia Latham Ball	Kirtlan Naylor; Adam King		8/14/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 937-038
Patti Latham Ball	Kirtlan Naylor; Adam B. King		8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 929-932

PRIVILEGE LOG
ADAM KING AND KIRTLAN NAYLOR ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Patti Latham Ball	Kirtlan Naylor; Adam B. King		8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 943-945
Adam King	Kirtlan Naylor; Patti Latham Ball	'Virginia Egger'; Jake Naylor	8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1054-1055
Kirtlan Naylor	Patti Latham Ball; 'Adam King'	'Virginia Egger'; Jake Naylor	8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1056-1057
Patti Latham Ball	'Adam King'; Kirtlan Naylor	'Virginia Egger'	8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1058
Patti Latham Ball	'Adam King'; Kirtlan Naylor	'Virginia Egger'	8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1059
Patti Latham Ball	'Adam King'; Kirtlan Naylor	'Virginia Egger'	8/16/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1060
Kirtlan Naylor	Patti Ball	Jake Naylor	8/18/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 925-928
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 911-914
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 915-920
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 921-924
Patti Latham Ball	Kirtlan Naylor		8/20/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1175-1176
Stacey Ihler	pball@mnwlegal.com; Adam King; Keith; Ali Nordstrom; Dewayne Briscoe	Kirtlan Naylor; Jake Naylor	8/21/2012	Subpoena regarding Investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 1221-1222
Kirtlan Naylor	Birch, Scott	Patti Ball; Stacey Ihler; Jake Naylor	12/13/2012	Investigation Administration	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - KING AND NAYLOR	BALL 896-897

PRIVILEGE LOG
TYLER WILLIAMS ATTY CLIENT COMMUNICATIONS/WORK PRODUCT

From	To	Cc	Sent	Subject	Privilege	BATES-Number
Patti Latham Ball	Tyler Williams		8/27/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1412-1417
Tyler Williams	Patti Latham Ball	Kirtlan Naylor	8/27/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1418-1423
Patti Latham Ball	Tyler Williams		8/27/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1424
Patti Latham Ball	Tyler Williams		8/29/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1409
Patti Latham Ball	Tyler Williams		8/29/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1410
Patti Latham Ball	Tyler Williams		9/7/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1411
Tyler Williams	Patti Latham Ball		9/7/2012	Subpoena regarding investigation	ATTY CLIENT COMMUNICATION/ WORK PRODUCT - TYLER WILLIAMS	BALL 1425-1439

EXHIBIT E
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT E
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

Eric Swartz

From: Eric Swartz
Sent: Friday, August 16, 2013 2:58 PM
To: kirt@naylorhales.com
Cc: Jake Naylor (Jake@naylorhales.com); Joy Vega
Subject: 2393.2 Hammer v. City of Sun Valley: Ball Subpoena Privilege Log - Meet and Confer

Kirt:

I am writing to meet and confer on the Patty Ball subpoena regarding the employment investigation she did of Sharon Hammer. Specifically, I am requesting that the City of Sun Valley and/or Patty Ball respond to subpoena Request Nos. 3, 4, 5, 7, 8, 9, 10, 12, 13, and 15, which were objected to on the grounds of attorney-client privilege and work-product. I am also requesting that they produce the two hundred and ten documents responsive to the subpoena that were withheld on the grounds of "attorney-client communication/work product."

Based on the privilege log, the majority of the withheld documents appear to be emails to/from Patty Ball. While Patty Ball may be a licensed attorney, she was not hired by the City as an attorney. She was hired as an independent fact-finding investigator. Neither the attorney-client privilege nor the work-product doctrine applies in such a situation. Performing an independent fact finding function is not the rendition of professional legal services, nor does it give rise to protected mental impressions as part of litigation.

Claims of privilege and work-product related to you, Adam King, and Brad Miller are also misplaced. Neither you, Mr. Miller, nor Mr. King were engaged by the City to work on the Hammer investigation. To the extent that your communications with Ms. Ball related to something that you (nor Mr. Miller or Mr. King) were hired for, such communications with Ms. Ball would have waived any claim of privilege as Ms. Ball was not your (nor Messrs. Miller or King's) client or a representative of your (or Messrs. Miller or King's) client.

Also, even if there was a claim of privilege, a blanket claim of privilege is not appropriate. Ms. Ball was investigating facts. Facts, witness statements, and the like are not privileged.

Finally, any attorney-client or work product privilege related to the Hammer Investigation that might have existed has also been waived because the written report(s) prepared by Ms. Ball regarding the Hammer Investigation were voluntarily released by Sun Valley. The reports were shared with the Blaine County Prosecutor, the Idaho Attorney General's office, as part of the Forensic Auditor during 2012, and the reports were published in the Idaho Mountain Express newspaper.

Please advise no later than August 23, 2013 whether the City and/or Ms. Ball are willing to produce the withheld documents or whether a Motion to Compel will be necessary. If we have to file a motion we will seek to recover costs and fees. Thank you.

Regards,

Eric B. Swartz
Jones & Swartz PLLC
1673 West Shoreline Drive, Ste 200
Boise, ID 83702
Ph. (208) 489-8989
Fax (208) 489-8988
www.jonesandswartzlaw.com

NOTICE: DO NOT read, copy or disseminate this communication unless you are the intended addressee. This communication may contain confidential and/or legally privileged information intended only for the addressee. All parties, entities or individuals privy to or in any way using or disclosing any protected health information in conjunction with this e-mail shall comply with all federal and state laws and regulations, including HIPAA regulations, with regard to the confidentiality, handling, and use of such protected health information. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance upon the contents of this information is strictly prohibited. If you have received this communication in error, please call us (collect) immediately at (208) 489-8989 and ask to speak to the sender.

EXHIBIT F
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT F
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA



NAYLOR & HALES, P.C.
ATTORNEYS AT LAW

KIRTLAN G. NAYLOR

Direct Line: 947-2070
E-mail: kirt@naylorhales.com

Kirtlan G. Naylor
Roger J. Hales
Bruce J. Castleton
James R. Stoll
Eric F. Nelson
David Sasser
Jacob H. Naylor
Tyler D. Williams

Of Counsel
Robert G. Hamlin
James D. Carlson

August 23, 2013

Eric Swartz
Jones & Swartz, PLLC
1673 W. Shoreline Dr., Suite 200
Boise, ID 83702
eric@jonesandswartzlaw.com

Sent Via Electronic Mail

Re: *Hammer v. City of Sun Valley, et al.*
Blaine County Case No: CV12-479

Dear Eric:

This letter is in response to your email of August 16, 2013, regarding our response to the subpoena issued to Patti Ball regarding materials and communications produced from her independent investigation. In light of your objections to our response to that subpoena, I would direct your attention to Judge Brody's "Memorandum Decision Granting Motion to Quash," filed October 22, 2012, in the *Ribi v. Donoval* matter (Blaine Co., Case No. CV-2011-1040) (enclosed herein). As a preliminary observation, the subpoenas filed in both matters (one by Mr. Donoval, and one by your firm) seek similar information from Ms. Ball, so the legal analysis of one is applicable to the other.

In his decision, Judge Brody makes multiple legal rulings and factual findings that directly address your objections. I anticipate that he would use this same legal analysis should you decide to file any motion to compel:

Eric Swartz
August 23, 2013
Page 2

I. Objections to privilege claims to emails to/from Patti Ball; objections to communications from Adam King, Brad Miller, and Kirt Naylor to Patti Ball; objections regarding the lack of privilege of facts, witnesses statements, and the like.

“There is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. . . Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party’s representative.” (p. 4, internal citations omitted) (emphasis added)

“Mr. Donoval correctly points out that underlying facts are not protected by the work product doctrine. However, the doctrine does protect disclosure of communications. ‘Communications’ are precisely what Mr. Donoval seeks in his subpoena. Mr. Donoval is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. He is not entitled to copies, however recorded, of Ms. Ball’s interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball’s duty as an investigator. He can obtain the underlying facts obtained by Ms. Ball in these interview through other discovery methods.” (p. 5, internal citations omitted) (emphasis added)

Thus, Judge Brody has already ruled that the very same materials you seek here are protected by the work-product doctrine. As these emails to and from her to employees and attorneys are communications, their privileged nature is independent as to their content. Alternative discovery methods are available to determine the unprivileged facts.

In addition to this, and contrary to your assertion, Ms. Ball was a representative of the City of Sun Valley by nature of her retention by the City as an investigator. As such,

Eric Swartz
August 23, 2013
Page 3

communication with attorneys representing the City of Sun Valley, such as Adam King, Brad Miller, or myself, would be additionally protected under the attorney client privilege. This is clearly indicated in the privilege log, as all attorney-client and work product privilege regarding these communications are claimed under Adam King, Brad Miller, Tyler Williams, or myself, with Patti Ball never claiming the attorney-client privilege on her own behalf, as an attorney.

II. Objections regarding the disclosure of the reports to the Blaine County Prosecutor, the Idaho Attorney General's office, as part of the Forensic Auditor during 2012, and publication in the Idaho Mountain Express newspaper.

"In this case, Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries." (p. 5, internal citations omitted)

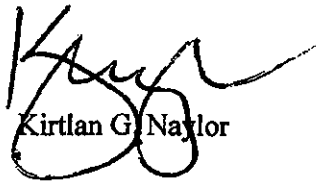
As the Idaho Attorney General's office participated with Blaine County in its investigation, it too would be considered as sharing a common interest. Likewise, the Forensic Auditor would hardly be considered an adversarial party as it was retained by special counsel to the City of Sun Valley, Moffat Thomas Barrett Fields to perform the forensic audit for the City of Sun Valley. While the written sections of the report (but not the exhibits) were disclosed by the Blaine County Prosecutor to the Idaho Mountain Express newspaper, this was due to public records request to the Blaine County Prosecutor, and not voluntarily by the City of Sun Valley.

To the extent that the December 20, 2011, reports, but not the exhibits, have been published, there is a valid argument that the work product privilege has been waived with respect to what has been published. Regardless, in Defendants' letter of June 24, 2013, it was noted that with respect to the Ball Reports and the previously undisclosed exhibits to those reports, that "once a protective order is issued, these documents will be produced." I will supplement our response to the subpoena with applicable documents shortly.

Eric Swartz
August 23, 2013
Page 4

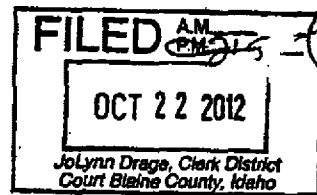
In light of the unique circumstance of a direct ruling from the same judge granting a motion to quash based on similar legal arguments from a substantially identical subpoena just a few months ago, I would advise that any attempted motion to compel would be facially frivolous, and we would seek corresponding attorney's fees for any necessary response to any such motion. If I have not covered any issue you have raised, or if you want to discuss any issue further, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirtlan G. Naylor". The signature is stylized with a large, sweeping "K" and a cursive "Naylor".

KGn:tjw
Enclosure
cc: Clients, w/out Enclosure
M:\CRMP\Hammer v. Sun Valley\Letters\8406 Swartz 07.wpd

OCT 25 2012



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

Nils Ribi,

Plaintiff/Counterdefendant

and Patricia Brolin-Ribi,

Plaintiff,

v.

James R. Donoval,

Defendant/Counterclaimant

CASE NO. CV 2011-1040

**MEMORANDUM DECISION GRANTING NON-PARTY CITY OF SUN VALLEY'S
MOTION TO QUASH SUBPOENA**

MEMORANDUM DECISION GRANTING MOTION TO QUASH

Page 1 of 7

The City of Sun Valley ("Sun Valley"), a non-party to this matter filed a Motion to Quash Subpoena pursuant to L.R.C.P. 45(d) concerning a subpoena issued by the Defendant/Counterclaimant, James Donoval to Patricia Ball, an investigator hired by Sun Valley. Oral argument was heard on this matter on September 18, 2012. Because this Court finds that the materials sought in the subpoena are protected by the work product doctrine, Sun Valley's Motion to Quash Subpoena is granted.

FACTS AND BACKGROUND

This case was initiated on December 30, 2011, when the Plaintiffs filed a complaint against Mr. Donoval. The lawsuit was filed seeking redress for allegedly defamatory and emotionally distressful statements made by Mr. Donoval in a series of written communications with members of the Sun Valley government and Ms. Brolin-Ribi in November 2011. There were three letters sent by Mr. Donoval to the mayor and members of the Sun Valley City Council between November 12, 2011 and November 17, 2011. All three of these letters either explicitly or implicitly threatened litigation against Sun Valley or members of its government. On November 21, 2011, Mr. Donoval, on behalf of Sharon Hammer, filed a lawsuit against Sun Valley and members of its government.

On November 17, 2011, Adam King, the Sun Valley City Attorney, contacted Ms. Ball about the possibility of retaining her services for a fact-finding investigation regarding various allegations that could be the subject of litigation. On November 21, 2011, Sun Valley retained Ms. Ball for the purpose of conducting an investigation into alleged violations of City policy. On November 22, 2011, Kirtlan Naylor was assigned by Sun Valley's insurance carrier to provide legal defense to Sun Valley, and Mr. Naylor was to appointed as Ms. Ball's primary legal contact on November 28, 2011. The scope of Ms. Ball's investigation included allegations concerning

violation of city policy made against Ms. Hammer, as well as allegations made by Ms. Hammer against Nils Ribi in her November 21, 2011 lawsuit. In conducting this investigation, Ms. Ball interviewed witnesses, reviewed information, and drafted a report. This report was concluded on December 20, 2011. Portions of this report were later provided to the Blaine County Prosecutor for review as to any criminal conduct.

On July 22, 2012, Ms. Ball was served a subpoena by Mr. Donoval commanding Ms. Ball to produce all audio tapes of interviews, documents, communications, agreements, and reports obtained or produced in connection with Ms. Ball's investigation for Sun Valley. Ms. Ball informed Sun Valley of the subpoena, and Sun Valley filed the current motion to quash.

LEGAL STANDARD

A court has the discretion to quash or modify a subpoena if the subpoena is "unreasonable, oppressive, fails to allow time for compliance, [or] requires disclosure of privileged or other protected matter and no exception or waiver applies." I.R.C.P. 45(d). When a court has discretion, it must not abuse that discretion. A court does not abuse its discretion when: (1) it correctly perceives the issue as one of discretion; (2) acts within the boundaries of such discretion and consistently with the legal standards applicable to the specific choices before it; and (3) reaches its decision by an exercise of reason. *Clark v. Klein*, 137 Idaho 154, 156, 45 P.3d 810, 812 (2001).

DISCUSSION

Sun Valley argues that the subpoena issued to Ms. Ball should be quashed because: (1) the subpoena is facially invalid; (2) the subpoena seeks protected work product, and; (3) the subpoena seeks material protected by the attorney-client privilege. The subpoena issued by Mr. Donoval to Ms. Ball is facially invalid. That deficiency, however, can be cured. Therefore, this

Court will consider whether the information sought by the subpoena is protected by either the work product doctrine or the attorney-client privilege.

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation "by or for another party or by or for that other party's representative...only upon a showing that the party seeking discovery has substantial need of the materials...and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." I.R.C.P. 26(b)(3). If discovery of such material is ordered, "the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

There is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. *Aff. Ball*, ¶ 3; *Aff. King*, ¶ 11. Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation. *Aff. Ball*, ¶¶ 3,5,6,10; *Aff. King*, ¶¶ 11,15,18. Therefore, the report Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation. Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party's representative.

Mr. Donoval correctly points out that underlying facts are not protected by the work product doctrine. *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). However, the doctrine does protect disclosure of communications. *Id.* "Communications" are precisely what Mr. Donoval seeks in his subpoena. Donoval Subpoena at 2. Mr. Donoval is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. He is not entitled to copies, however recorded, of Ms. Ball's interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball's duty as an investigator. He can obtain the underlying facts obtained by Ms. Ball in these interviews through other discovery methods.

It is possible under certain circumstances to waive the work product doctrine. If work product is disclosed, and that disclosure is to an adversary, the protection is lost. *Trustees of Elec. Workers No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1, 14-15 (D.C. Cir. 2010) (citations omitted). In this case, part of Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries. *See U.S. v. AT&T*, 642 F.2d 1285, 1300 (D.C. Cir. 1980) (MCI's disclosure of work product to the government, for the purpose of aiding in the investigation of MCI's opponent did not waive work product immunity). "While the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself [to waive protection of work product]." *Id.* at 1299. Since there has been no showing that Sun Valley disclosed its work product to an adversary, it has not waived protection of its work product.

Mr. Donoval has not shown that he cannot obtain the underlying facts through depositions, interrogatories, requests for production, or other discovery methods, he has shown neither a substantial need for Ms. Ball's materials, nor an undue hardship in attaining the substantial equivalent of these materials by other means. Moreover, he has not shown that Sun Valley has waived work product protection. Because Mr. Donoval has not met this burden under I.R.C.P. 26(b)(3), and this Court finds that Ms. Ball was retained in anticipation of litigation, and the materials she prepared were prepared in anticipation of litigation, those materials are protected. Because of this, there is no need to analyze whether those materials are protected from disclosure under the attorney-client privilege.

CONCLUSION

For the foregoing reasons, the City of Sun Valley's MOTION TO QUASH SUBPOENA is hereby GRANTED.

IT IS SO ORDERED

Dated: 10/17/12

Signed: Jonathan Brody

Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

24 I, Crystal Rigby, Deputy Clerk for the County of Minidoka, do hereby certify that on the day of October, 2012, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION GRANTING NON-PARTY CITY OF SUN VALLEY'S MOTION TO QUASH SUBPOENA to each of the persons as listed below:

Kirtlan Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

CLERK OF THE DISTRICT COURT

BY:


Crystal Rigby
Deputy Clerk

EXHIBIT G
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT G
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

Eric Swartz

From: Eric Swartz
Sent: Tuesday, August 27, 2013 2:35 PM
To: kirt@naylorhales.com
Cc: Jake Naylor (Jake@naylorhales.com); Joy Vega
Subject: RE: 2393.2 Hammer v. City of Sun Valley: Ball Subpoena Privilege Log - Meet and Confer
Attachments: Willich_Affidavit.PDF

Kirt:

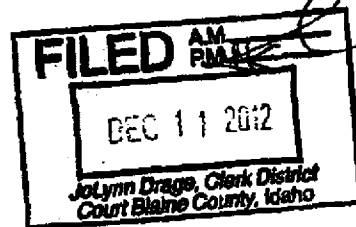
Thank you for your meet and confer response. As I understand it, Judge Brody's prior findings were made without the benefit of Mayor Willich's testimony. As I read Mayor Willich's testimony (attached), the City of Sun Valley did not grant you, Ms. Ball, or Mr. King the authority necessary for one or more of you to act in the capacities that are necessary for a claim of the privileges that Ms. Ball is claiming in response to the subpoena served on her.

Also, even if there was a basis for the privileges claim on the withheld materials, what basis does Ms. Ball/the City have to continue claiming such privileges where, as here, the Ball reports were made public? Please respond by the end of the week. Thank you.

Regards,

Eric B. Swartz
Jones & Swartz PLLC
1673 West Shoreline Drive, Ste 200
Boise, ID 83702
Ph. (208) 489-8989
Fax (208) 489-8988
www.jonesandswartzlaw.com

James R. Donoval, Pro Se (ISBA No. 8142)
4110 Eaton Ave., Suite D
Caldwell, ID 83607
(312) 859-2029
Idaho Atty No. 8142
jdonoval@aol.com



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,
Plaintiff (Dismissed) - CounterDefendant,

PATRICIA BROLIN-RIBI,
Plaintiff,

v.

JAMES R. DONOVAL
Defendant-CounterPlaintiff,

No. CV-2011-1040

SUPPLEMENTAL AFFIDAVIT OF WAYNE WILlich
FORMER MAYOR OF THE CITY OF SUN VALLEY

I, WAYNE WILlich, first duly sworn on oath, depose and state as follows:

1) My name is Wayne Willich, and from the first week of January of 2008 to January 3, 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) On or about December 4, 2012, the Idaho Mountain Express posted on its on-line version, a document purporting to be a report issued by Investigator Patti Ball dated December 20, 2011 (the "Questionable Patti Ball Report") (Exhibit A), which was

purportedly prepared prior to the termination of my administration as Mayor Of Sun Valley on January 3, 2012.

3) I certify that prior to my viewing of the Questionable Patti Ball Report on or about December 4, 2012, that I never was provided a copy of the Questionable Patti Ball Report, including specifically that I was never provided a copy of the Questionable Patti Ball Report prior to the termination of my tenure as Mayor Of Sun Valley on January 3, 2012.

4) I certify that on December 12, 2012 and December 13, 2012, I was provided a copy of a report (the "Final Patti Ball Report") prepared by Investigator Ball that significantly differs from the Questionable Patti Ball Report in that the Final Patti Ball Report included factual allegations and findings about misconduct of Sun Valley City Council Member Nils Ribi which are missing from the Questionable Patti Ball Report.

5) I certify that the Final Patti Ball Report also significantly differs from the Questionable Patti Ball Report in that the Final Patti Ball Report asserted multiple facts and made multiple conclusions about the conduct of Sharon R. Hammer that differ from the facts and conclusions about the conduct of Sharon R. Hammer now found in the Questionable Patti Ball Report.

6) I certify that in many sections of the Final Patti Ball Report that Investigator Ball had made factually incorrect statements, and had made several clearly incorrect

findings and conclusion, based on hearsay, doubtful and dubious statements of individuals that had been interviewed by Investigator Ball related to allegations of misconduct against Ms. Hammer.

7) I certify that in many sections of the Final Patti Ball Report that Investigator Ball made factually incorrect statements, and made several clearly incorrect findings and conclusion, based on hearsay, doubtful and dubious statements of individuals that had been interviewed by Investigator Ball related to allegations of harassment, hostility and other misconduct against Council Member Ribí, and that Investigator Ball had woefully failed to make a concerted effort to investigate the serious allegations of harassment and hostile work environment that had been alleged against Council Member Ribí by Ms. Hammer.

8) I certify that as of December 13, 2011, I considered the Final Patti Ball Report to be the final work product requested of Investigator Ball, and indicated to Investigator Ball that her services to Sun Valley were completed.

9) I have reviewed the December 2011 invoices of Investigator Ball (Investigator B) and Sun Valley City Attorney Adam King (Exhibit C). The invoice of Investigator Ball (Exhibit B) confirms that on December 12, 2011 and December 13, 2011 that Investigator Ball presented to me a singular report, which was the Final Patti Ball Report. The invoice of City Attorney King (Exhibit C) confirms that as of December 13, 2011 the Final Patti Ball Report was a singular report and was "final".

10) Based on the Final Patti Ball Report, and my authority to make final and binding disciplinary findings pursuant Section 8.7 of the Sun Valley Personnel Policy And Procedures, I concluded that Ms. Hammer had not committed any infractions of Sun Valley policies related to a) her use of a Sun Valley automobile because I had authorized her to use the automobile at all hours for both Sun Valley and personal use, b) her use of flex time to compensate her for non-standard work hours she had been required to work over the course of 2008 through 2011 because I had authorized her to use the flex time, and. c) her use of a Sun Valley credit card because Sun Valley Treasurer Michelle Frostenson and the Sun Valley City Council had already specifically approved as legitimate all expenditures Ms. Hammer had incurred on the Sun Valley credit card.

11) Based on my findings related to allegations of misconduct against Ms. Hammer, and my authority pursuant to Section 8.7 of the Sun Valley Personnel Policies. I considered all disciplinary actions against Ms. Hammer to be concluded as of December 13, 2011.

12) Based on the Final Patti Ball Report and my own knowledge of Ms. Hammer's multiple complaints and my knowledge of Council Member Ribí's conduct towards Ms. Hammer during 2009 through 2011, and my authority to make final and binding disciplinary findings pursuant Section 8.7 of the Sun Valley Personnel Policy And Procedures, I concluded that Council Member Ribí had violated the Sun Valley Personnel Policy on Harassment (Section 7.5) related to his treatment of Ms. Hammer on

multiple occasions over the course of 2009 through 2011, including that Council Member Ribi had assaulted Ms. Hammer during a break in a Sun Valley City Council meeting on September 15, 2011.

13) I certify that between December 13, 2012 until my tenure as Mayor Of Sun Valley terminated on January 3, 2012, I gave Investigator Ball no authority to contact attorney Kirtlan Naylor, to discuss the issues associated with the investigation which resulted in the Final Patti Ball Report or to take any direction of any sort from Attorney Naylor.

14) I certify that between December 13, 2011 and the termination of my tenure as Mayor Of Sun Valley on January 3, 2012, I gave Investigator Ball no authority or no direction to modify the Final Patti Ball Report in any fashion or to prepare any additional or supplemental reports for Sun Valley related to the disciplinary investigation she had been retained to perform on behalf of Sun Valley.


15) I have reviewed the December of 2011 invoice of Investigator Ball (Exhibit B) which indicates that in direct violation of my authority and without my knowledge or approval, between December 15, 2011 and December 20, 2011, Investigator Ball surreptitiously communicated with Attorney Naylor and apparently prepared the Questionable Patti Ball Report at Attorney Naylor's direction without my authority, knowledge or direction, and dated the Questionable Patti Ball Report on December 20.

2011 to fraudulently assert that it had been completed during my tenure with my knowledge as Mayor Of Sun Valley. when it had not.

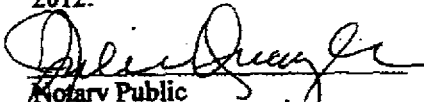
16) I certify, that the Final Patti Ball Report did not include the language that appears on the Questionable Patti Ball Report claiming that "This Document Is Protected By Attorney Work Product Privilege", as at no time was Investigator Ball retained by Sun Valley during my tenure as Mayor Of Sun Valley to perform any legal work or to prepare her report in regards to pending litigation, as Investigator Ball was retained solely to perform an internal Sun Valley disciplinary investigation.

17) At no time during my tenure as Mayor Of Sun Valley through January 3, 2012. did I authorize or seek that the Blaine County Prosecutor institute a criminal investigation of either Ms. Hammer, Sun Valley Fire Chief Jeff Carnes or any other Sun Valley employee. nor did I provide Attorney Naylor with any authority to do so without my specific approval. which Attorney Naylor never obtained.

Further Affiant sayeth not.


Wayne Willich

Subscribed To And Sworn Before
Me This 7th Day Of December
2012.


Notary Public
My commission
expires 11-1-2017

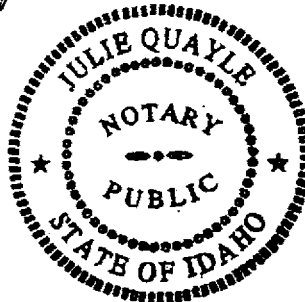


EXHIBIT H
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT H
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

Eric Swartz

From: Kirtlan Naylor <kirt@naylorhailes.com>
Sent: Friday, August 30, 2013 1:43 PM
To: Eric Swartz
Cc: Jake Naylor; Joy Vega; Tricia Wassmuth
Subject: RE: 2393.2 Hammer v. City of Sun Valley: Ball Subpoena Privilege Log - Meet and Confer
Attachments: SV 338-339 12-16-2011 HAMMER-Notice of Continued Leave (served).pdf; SV 344-345 12-16-2011 HAMMER-Garrity Notice (served).pdf

Eric,

We already informed you that we would provide you the Ball Reports in conjunction with the confidentiality agreement, and even addressed your very argument, so I am unclear about your continued concern on that issue.

Regarding the two affidavits of Mr. Willich filed in the motion for reconsideration, primarily, the majority of the substance of these affidavits was in fact considered by Judge Brody through Mr. Donoval's introduction of Mr. Willich's prior testimony given at the January 11, 2012 hearing. However, to anything not addressed in that prior testimony, these new affidavits only serve to specifically affirm the creation of the relationships and authority that you now state did not exist. Mr. Willich states that he retained Ms. Ball as the investigator for the city, and as Judge Brody has held, her work product (including communications) are privileged with respect to that investigation. It is irrelevant what Mr. Willich believed was the "final report," because there is no evidence that he terminated Ms. Ball's services, nor that her services were affirmatively terminated by anyone at the City at any time, nor reliable evidence that she acted outside the parameters of her services.

In addition, there is evidence that rebuts your conclusions from the Willich affidavit that affects the asserted privileges. For example, see the attached notices signed by then-mayor Willich on December 16, 2011 that establish the investigation was still pending and putting Sharon Hammer on notice of legal rights and obligations of her continued cooperation in that investigation. This directly contradicts Mr. Willich's affidavit (paragraph 11).

Mr. King and myself were at all times relevant counsel for the City, and as Ms. Ball was a representative of the City with respect to her investigation, and there is no evidence of the termination of any of these relationships, our communications are privileged both by nature of the work product privilege and our attorney client relationship.

Please let me know of any further concerns, but we feel these matters have clearly already been decided by Judge Brody.

Kirtlan G. Naylor

Direct 208 947-2070



This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Wayne Willich, Mayor
DATE: December 16, 2011
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. **Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.**

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. **You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.**

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated this 16th Day of December, 2011.



Wayne Willich, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this 16th day of December, 2011.



Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Wayne Willich
DATE: December 16, 2011
RE: **NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY CONTINUED ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, **you are directed** not to perform any of the duties of your employment other than those necessary to preserve the City's interests in your absence. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. **This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.**

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment, as set forth in the Notice of Administration served on you as well.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or

application (however characterized) or remove any documents or other City property (excluding only your personal effects unconnected with City operations) from any City facility.

You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences.

In the event the investigation indicates personnel action is warranted, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

DATED this 16th day of December 2011.



Wayne Willich
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this ^{7th}~~16th~~ day of December, 2011.



Signature

EXHIBIT I
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT I
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

Eric Swartz

From: Eric Swartz
Sent: Thursday, September 05, 2013 1:03 PM
To: 'Kirtlan Naylor'
Cc: Jake Naylor; Joy Vega; Tricia Wassmuth
Subject: RE: 2393.2 Hammer v. City of Sun Valley: Ball Subpoena Privilege Log - Meet and Confer

Kirt:

The continued concern is Patty Ball's failure to respond to subpoena Request Nos. 3, 4, 5, 7, 8, 9, 10, 12, 13, and 15, and her and/or the City's withholding of the two hundred and ten documents on the grounds of privileges that do not exist or, if they did exist, they no longer do because they were waived. The two November 16 documents you provided do not establish any of the claimed privileges – they are simply advising Ms. Hammer that she is being put on administrative leave.

If Ms. Ball and/or the City is going to continue to withhold the documents and continue to refuse to respond to certain requests, I think the only way that we are going to be able to avoid having to bring a Motion to Compel is to see confirmation of the City's engagement of you, Ms. Ball, and Mr. King as counsel for the Sharon Hammer investigation. Mayor Willich states there were no such engagements.

Can you produce written confirmation of your engagement for the purposes of rendering legal advice incident to the Hammer investigation that is dated after November 14 when the Council decided to do the investigation and before December 12 when the investigation was brought to an end by Mayor Willich?

Can you produce written confirmation of Ms. Ball's engagement for the purposes of rendering legal advice incident to the Hammer investigation that is dated after November 14 when the Council decided to do the investigation and before December 12 when the investigation was brought to an end by Mayor Willich?

Can you produce written confirmation of Ms. Ball's authorization to retain counsel on behalf of the City such that she qualifies as a representative of the client as required by Rule 502(a)(2) of the Idaho Rules of Evidence?

Can you produce written confirmation of Mr. King's engagement for the purposes of rendering legal advice incident to the Hammer investigation that is dated after November 14 when the Council decided to do the investigation and before December 12 when the investigation was brought to an end by Mayor Willich?

Regarding the alleged common interest privilege:

Notwithstanding the fact that Ms. Ball was not hired as counsel and not hired for litigation, can you produce written confirmation of your alleged common interest agreement with Ms. Ball that is dated before the dates of the communications being withheld?

Notwithstanding the fact that Ms. Ball was not hired as counsel and not hired for litigation, can you produce written confirmation of Ms. Ball's alleged common interest agreement with Mr. King that is dated before the dates of the communications being withheld?

Can you produce written confirmation of your alleged common interest agreement with Mr. King that is dated before the dates of the communications being withheld?

Notwithstanding the fact that the Forensic Auditor is not an attorney, was not authorized to obtain legal representation for the City, and was not involved in litigation, can you produce written confirmation of your alleged common interest agreement with the Forensic Auditor that is dated before the dates of the communications being withheld?

Even if any of these documents exist, can you explain how the public publication of the Hammer investigation reports did not waive the privileges being asserted to withhold communications giving rise to the reports? Can you explain how your work-product was not waived when you shared it with people who were not your clients and who were not representatives of your client?

Your clients, the City and Ms. Ball, bear the burden of proving the privileges being claimed. The aforementioned requested materials are instrumental in establishing the privileges – particularly in light of Mayor Willich's statement that the alleged privileges do not exist. As such, it seems prudent for you all to produce these things voluntarily now, versus forcing Ms. Hammer to file a Motion to Compel which will necessarily require you and your clients to produce the materials in response in order to prove the claimed privileges.

I appreciate hearing back from you by Sept. 12. Thank you.

Regards,

Eric B. Swartz
Jones & Swartz PLLC
1673 West Shoreline Drive, Ste 200
Boise, ID 83702
Ph. (208) 489-8989
Fax (208) 489-8988
www.jonesandswartzlaw.com

() ()

EXHIBIT J

TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

EXHIBIT J

TO AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA

Eric Swartz

From: Kirtlan Naylor <kirt@naylorhales.com>
Sent: Wednesday, September 18, 2013 3:22 PM
To: Eric Swartz
Cc: Jake Naylor; Joy Vega; Tricia Wassmuth
Subject: RE: 2393.2 Hammer v. City of Sun Valley: Ball Subpoena Privilege Log - Meet and Confer
Attachments: 050 Plf's Aff of Hammer Confirming the Final and Binding Dismissal by SV....pdf

Eric,

Thank you for the extension to respond to your email below.

I'm not sure you understand our position. It is basically the same position as Judge Brody's decision.

The two December [I believe you meant to say December] 16 notices to Sharon Hammer, signed by Willich demonstrate his faulty memory when he asserts now that as of December 12 "the investigation was brought to an end." Those notices clearly indicate the investigation was ongoing. This mis-recollection of fact by Willich, upon which you rely, is at the heart of the dispute on these issues.

To further illustrate the ongoing nature of the "investigation," please see the affidavit of your client attached. The December 29 email from Sharon indicates she had no idea that the investigation was complete, and in reply, the mayor references the meeting and report of December 12 specifically as a draft, and neither mentions a final report nor any termination of Patti Ball as of that date. Finally, in the attached affidavit at paragraph 5, Sharon states that Willich told her, as of Dec. 16, that "the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days."

Therefore, Ms. Ball's relationship as an agent to the City continued well past December 12 by the sworn testimony of your client.

We also rely on Judge Brody's decision that found sharing the Ball reports with the prosecuting attorney did not waive any privilege, and since the City did not make them public, the City has not waived its privileges.

Kirtlan G. Naylor

Direct 208 947-2070



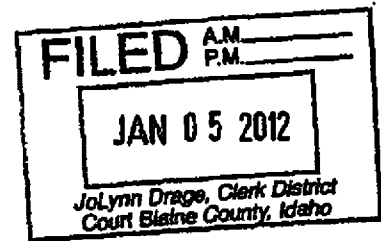
NAYLOR & HALES, P.C.
950 WEST BANNOCK ST., SUITE 610 BOISE, ID 83702

This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

From: Eric Swartz [mailto:eric@jonesandswartzlaw.com]
Sent: Thursday, September 05, 2013 1:03 PM
To: Kirtlan Naylor

JAN 10 2012

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,
Plaintiff,

v.

No. CV-2011-928

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation;
ADAM KING, an individual; and, ROBERT,
YOUNGMAN,
Defendants.

AFFIDAVIT OF SHARON R. HAMMER

**CONFIRMING THE FINAL AND BINDING DISMISSAL OF ALL
ALLEGATIONS OF WRONGDOING ALLEGED BY THE CITY OF SUN
VALLEY AGAINST SHARON R. HAMMER**

I, SHARON R. HAMMER, first duly sworn on oath, depose and state as follows:

1) My name is Sharon R. Hammer, I am the Plaintiff herein, and I am competent to testify as to the matters herein. I certify, pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) On information and belief, based on statements made by Sun Valley Finance Manager Michelle Frostenson and allegations asserted by Sun Valley City Council Member Nils Ribi against me at City Of Sun Valley Special Executive Sessions of November 11,

2011 and November 14, 2011, on November 14, 2011 Sun Valley Mayor Wayne Willich ordered that a special independent investigation (the "Special Independent Investigation") be commenced regarding the allegations made by Council Member Ribi at the November 11, 2011 and the November 14, 2011 Sun Valley City Council Executive Sessions. Several days later, Mayor Willich retained a former prosecuting attorney named Patti Ball ("Special Investigator Ball") to thereafter perform the Special Independent Investigation.

3) On November 18, 2011, I received the letter attached as Exhibit A from Mayor Willich placing me on "administrative leave" (the "Administrative Leave Letter"), and describing that the "administrative leave" was not a disciplinary action. At the time Mayor Willich gave me the Administrative Leave Letter, Mayor Willich told me that I was being placed on "administrative leave" to ensure that I was protected from Council Member Ribi and to ensure that there were no insinuations that I had any influence on the Special Independent Investigation.

4) Between November 18, 2011 and the first week of December of 2011, I answered any and all questions posed to me by Special Investigator Ball, submitted documents requested of me to Special Investigator Ball, held an extensive personal one-on-one interview with Special Investigator Ball, and otherwise fully cooperated with Special Investigator Ball and the Special Independent Investigation.

5) On or about December 16, 2011, I discussed settlement potential with Mayor Willich, who also told me that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days. Based on Mayor Willich's statements to me, I directed my attorney to withdraw the

pending Motion For Preliminary And Permanent Injunction until the formal charges, if any, against me could be reviewed or responded to.

6) At some time prior to December 23, 2011, Mayor Willich received an oral report and reviewed a written report from Special Investigator Ball detailing Special Investigator Ball's findings in regards to the Special Independent Investigation. Although I have requested a copy of the written report of Special Investigator Ball related to the Special Independent Investigation, I have been told by Mayor Willich that it is solely in the possession of City Attorney Adam King (a Defendant herein), who has not released a copy of Special Investigator Ball's report to me.

7) On December 23, 2011, I received the email attached as Exhibit B from Mayor Willich, confirming that I was to report back to active duty as the Sun Valley City Administrator and as a Sun Valley firefighter and EMT.

8) On December 28, 2011, I received the annual review attached as Exhibit C from Mayor Willich, indicating that I performed at the highest possible level in every category of performance as the Sun Valley City Administrator. In the annual review, Mayor Willich also gave extensive additional comments as to my high level of performance, dedication and integrity in regards to my service as the Sun Valley City Administrator.

9) On or about December 29, 2011, I was told by Mayor Willich that the Special Independent Investigation found nothing that could warrant any formal charges of discipline being filed against me. On information and belief, the report of Special Investigator Ball only

insinuates that there were potential differences of opinion in regards to my complying with certain provisions of the Sun Valley Personnel Policies And Procedures.


10) On December 29, 2011, I received the email attached as Exhibit D from Mayor Willich confirming to me that nothing Mayor Willich found in the Special Independent Investigation or the report of Special Investigator Ball warranted any further disciplinary action. No formal disciplinary charges were ever issued to me by Mayor Willich. The December 29, 2011 email from Mayor Willich attached as Exhibit D confirms that the investigation of me, commenced based on Council Member Ribi's and Finance Manager Frostenson's unsubstantiated allegations, was closed.

11) Pursuant to Section 2.1(A) of the Sun Valley Personnel Policies And Procedures adopted by the Sun Valley City Council (Exhibit E), as the Sun Valley City Administrator, I have unilateral discretion to make final determinations as to the interpretation of any and all Sun Valley Personnel Policies And Procedures, including in regards to how they apply to myself.

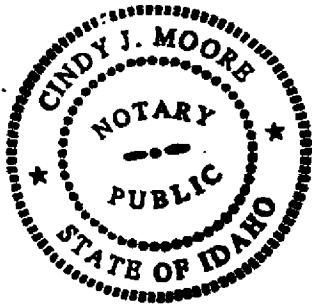
12) Section 8.7 of the Sun Valley Personnel Policies And Procedures adopted by the Sun Valley City Council of which Council Member Ribi is a member (attached as part of the Verified Amended Complaint herein), provides that all decisions of the Mayor Of Sun Valley in regards to disciplinary actions related to all Sun Valley employees, including the Sun Valley City Administrator, are "final and binding", and therefore pursuant to my authority under Section 2.1(A) of the Sun Valley Personnel Policies And Procedures, all future allegations of wrongdoing against me have been found to be dismissed as "final and binding"


FURTHER YOUR AFFLIANT SAYETH NOT

Dated this 5 day of January, 2012.


Sharon R. Hammer

SUBSCRIBED TO AND SWORN to before me this 5 day of January, 2012.



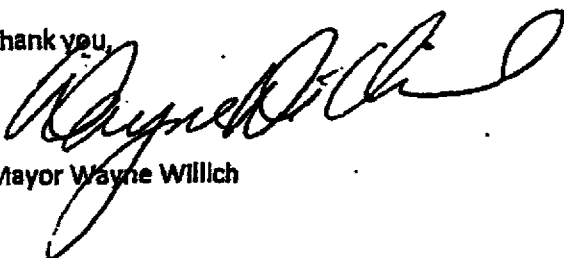

Notary Public in and for the State Of Idaho
Residing in the state Of Idaho, Blaine County
My Commission expires: 3-6-2014

November 18, 2011

Dear Sharon:

Effective immediately you are being placed on paid administrative leave until further notice from your position as City Administrator and paid on-call firefighter/EMT. Please deliver all City of Sun Valley property in your possession to City Hall immediately, including but not limited to cell phones, keys, iPads, computers, computer files/computerized records, papers, telephones, pagers, fire equipment, EMT equipment, and any other property in your possession which belongs to the City of Sun Valley. This is not a disciplinary action.

Thank you,



Mayor Wayne Willich

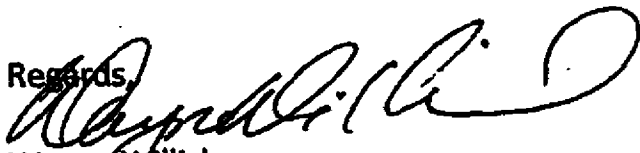
Wayne Willich

From: Wayne Willich
Sent: Friday, December 23, 2011 3:46 PM
To: 'sharonrhammer@aol.com'
Subject: Return from leave

Sharon,

I am requesting you return from leave on Tuesday December 27th at your normal 8:00 AM time. You will assume your normal duties as City Administrator, paid-on-call firefighter and EMT roles. I must remind you there is a certain level of tension among the City staff and I expect you to make every effort to achieve a degree of harmony among them. Also, if you feel any animosity, intimidation or other untoward behavior directed at you, you must come to me with the information to give me a chance to resolve it. If you are not satisfied you are free to contact Kirt Naylor at his offices in Boise. Tel 208-383-9511

Regards,


Wayne Willich
Mayor City of Sun Valley
(208) 622-4438 FAX (208) 622-3401
wwillich@svidaho.org

Received  12/23/11

EX B 55

CONFIDENTIAL

**CITY OF SUN VALLEY
EMPLOYEE PERFORMANCE EVALUATION
SUPERVISOR EVALUATION
FOR DEPARTMENT HEADS/SUPERVISOR**

NAME: SHARON HAMMER

JOB TITLE: CITY ADMINISTRATOR

DEPARTMENT: ADMINISTRATION

EVALUATED BY: MAYOR WAYNE WILICH

PERIOD COVERED BY THIS EVALUATION: 2011

DATE OF EVALUATION: 12/28/2011

EX C

**CITY OF SUN VALLEY
PERFORMANCE EVALUATION
SUPERVISOR EVALUATION**

NAME OF EMPLOYEE: SHARON HAMMER

PLEASE RATE EACH CATEGORY AND PROVIDE COMMENTS.

RATING SYSTEM:

- 1 - DEFICIENT
- 2 - ADEQUATE
- 3 - GOOD
- 4 - EXCELLENT
- 5 - EXTRAORDINARY

INSTRUCTIONS: The job description and duties of the position are attached and should be reviewed prior to completing the evaluation. Complete the form electronically. For all criteria provide a rating number and comments.

1. PROFESSIONAL KNOWLEDGE: Rating: 5

Consider these criteria in rating:

- > Ability to demonstrate current professional techniques for job accomplishment
- > Keeps current on safety practices and techniques and ensures that safety is a top department priority
- > Ability to demonstrate manual and equipment skills
- > Ability to train and instruct others
- > Knowledge and applications of facts, policies, methods and procedures
- > Reports or records when required as part of the job
- > Strength of written and oral communication skills

Comment:

SHARON GOES WELL BEYOND THE

DUTIES OF ADMINISTRATOR AS I KNOW THEM

2. LEADERSHIP: Rating: 5

Consider these criteria in rating:

- Ability to explain the mission of the department and its beliefs and practices
- Ensures that the professional goals of the City, staff and public are carried out in a consistent and constructive manner
- Develops and maintains a positive relationship with the community, staff and regional agencies
- Provides for a positive work environment which encourages a high level of service and an appreciation for good work
- Ability to persuade, motivate or guide staff
- Promotes and supports an employee's professional growth, whenever practical
- Ability to take charge in situations, when appropriate

Comment:

I HAVE A LONG EXPERIENCE WITH LEADERS IN
THE CORPORATE WORLD. SHE IS A LEADER.

3. PLANNING, ORGANIZATION, AND SKILLS: Rating: 5

Consider these criteria in rating:

- Effective use of resources (e.g., time, tools, equipment, materials, staff)
- Ability to prioritize and schedule work assignments
- Establishes and meets deadlines
- Dependability of quality: accuracy & thoroughness
- Quantity of work meets expectations and needs of the department

Comment:

WITH THE EXCEPTIONALLY SMALL STAFF WE HAVE.
SHE HAS STEPPED UP ON NUMEROUS OCCASIONS
TO FILL-IN AND TO PERFORM.

4. INTERPERSONAL SKILLS AND RELATIONSHIPS: Rating: 5

Consider these criteria in rating:

- Ability to display tact and courtesy
- Ability to participate constructively and open to suggestions from others
- Ability to handle unpleasant, stressful and/or volatile situations
- Willingness to work with supervisor, fellow employees, and others
- Fairness and impartiality in dealing with others
- Flexibility; Ability to effectively adjust to changing priorities and circumstances
- Use of common sense and practicality to decision making

Comment:

TREMENDOUS ABILITY TO INTERACT WITH ALL

LEVELS. WELL LIKED BY STAFF AND THE COMMUNITY.

5. INITIATIVE/RESOURCEFULNESS/PROBLEM SOLVING: Rating: 5

Consider these criteria in rating:

- Knowledge of where and how to get information
- Employee's resourcefulness in being more efficient and effective
- Employee's ability to refer a situation to appropriate department or supervisor
- Identification of appropriate alternative for action
- Judgment in making appropriate choices and decision
- Employee's use of innovative methods/approaches in identification of alternatives

Comment:

ONCE AGAIN — STEPS UP. SHOWS REMARKABLE

SKILL IN KNOWLEDGE GATHERING AND SUPPORT

6. EVALUATE PROGRESS, SUCCESS AND/OR CHALLENGES IN WORKING ON GOALS FROM LAST PERFORMANCE EVALUATION:

Prior to distributing provide goals from last evaluation

GOAL EVALUATION DISCUSSION: THE BIGGEST GOALS REVOLVED
AROUND THE CAPITAL PLAN & THE BOND ISSUE.
ALSO, FINANCIAL REPORTING WAS MET WITH
6FOA AWARDS. ON BOTH COUNTS THE JOB DONE
WAS OUTSTANDING.

7. GOALS FOR NEXT YEAR OR REVIEW PERIOD:

THERE MAY BE BOND ISSUE FLAIED
IN MAY. THAT WILL BE A BIG ASSIGNMENT.
PROVIDE STABILITY TO THE NEW
ADMINISTRATION AND PERFORM
FOR THE COMMUNITY.

Signature of Supervisor: _____

Date: _____

12/28/2011

EMPLOYEE PERFORMANCE EVALUATION

I understand that my signature below acknowledges receipt and review of this performance evaluation.

Signature of Employee: _____

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Date: _____

12/28/11

From: Wayne Willich
Sent: Thursday, December 29, 2011 1:40 PM
To: Sharon Hammer
Subject: RE: Investigation

Sharon,
Here is the way I understand it now. A draft report was prepared by Patti Ball. It was reviewed by Mayor Elect Briscoe, ICRMP attorneys, Adam King and me. After reviewing the report and conducting a bit of an investigation of my own, I have concluded there was insufficient material in the report to warrant your staying on leave. In fact, through my own work, I was able to find several inconsistencies in the report that led me to bring the entire report into question. As far as I am concerned the matter is closed.

The Mayor

From: Sharon Hammer
Sent: Thursday, December 29, 2011 9:53 AM
To: Wayne Willich
Subject: Investigation

Mayor: Can you please advise me on the status of the investigation of me?

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

EX D



SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES AND PROCEDURES

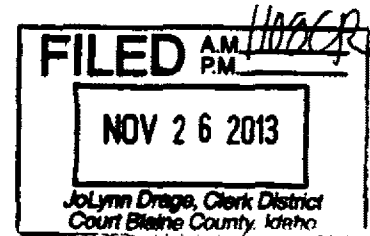
2.1 GENERAL ADMINISTRATION

Authority for the administration of Personnel Policies and Procedures is delegated to the City Administrator, who is responsible to and directed by the Mayor, and who is responsible for the City's day-to-day operations.

- A. It shall be the responsibility of the City Administrator to provide interpretation and advice to Department Heads and Supervisory staff concerning the application of these policies and procedures. The City Administrator shall make the final determination of questions of interpretations of these policies and the application of these policies.
- B. City Attorney: As the legal counsel for the City, the City Attorney shall provide professional legal advice and services to the City Administrator and Mayor on matters related to these policies and procedures.

2.2 DISTRIBUTION

At the time of employment, each Employee shall receive a copy of this Manual. It is the responsibility of the Employee to familiarize him or herself with the contents of the Manual and to acknowledge its receipt in writing. Periodic updates or changes shall also be acknowledged in writing.



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2013-479
2012

**MEMORANDUM DECISION
GRANTING DEFENDANTS
MOTION TO DISMISS**

BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendants, the City of Sun Valley, Nils Ribi, and DeWayne Briscoe. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendants for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA"). The Plaintiff has claims against the City of Sun Valley, as well as Mr. Briscoe, and Mr. Ribi, in their individual capacities.

The Defendants filed a Motion to Dismiss on September 19th, 2013, seeking to dismiss the claims against Mr. Briscoe and Mr. Ribi. The Defendants argue that both Mr. Briscoe and Mr. Ribi are elected officials, or agents, of the City of Sun Valley, and therefore are not individually liable for a cause of action brought under I.C. § 6-2101, the IPPEA. Pursuant to that argument, the Defendants seek to dismiss the claim against Mr. Briscoe and Mr. Ribi for failure to state a legal claim. The Plaintiff counters, stating that both Mr. Briscoe and Mr. Ribi can be individually sued though the IPPEA, and that the statutory intent of the IPPEA does not comport with limiting an injured plaintiff's ability to bring a cause of action against such individuals.

The Motion to Dismiss was argued before this Court on October 1, 2013, with this Court taking the matter under advisement.

MOTION TO DISMISS STANDARD

The standard for reviewing a 12(b)(6) Motion for Dismissal of a complaint is "A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated." *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002).

When reviewing a motion to dismiss pursuant to I.R.C.P. 12(b)(6), the non-moving party is entitled to have all inferences viewed in his favor. *Id.* at 104 citing *Orthman v. Idaho Power Co.*, 126 Idaho 960, 961, 895 P.2d 561, 562 (1995). After drawing all inferences in the non-moving party's favor, this Court must find whether a claim for relief has been stated. *Id.* “The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *Id.* This Court must “examine whether Plaintiffs have sufficiently alleged the requisite elements of standing in their complaint to survive a 12(b)(6) motion to dismiss.” *Id.* “Where a claim for relief is stated, the complaint survives the motion to dismiss and the plaintiff is entitled to offer evidence in support of its claim.” *Indep. Sch. Dist. of Boise City v. Harris Family Ltd. P'ship*, 150 Idaho 583, 587, 249 P.3d 382, 386 (2011) citing *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

DISCUSSION & ANALYSIS

“A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated.” *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). The issue presented before this Court is whether the Plaintiff stated a claim for relief.

To resolve the issue presented to this Court, it must be determined whether Mr. Ribí and Mr. Briscoe are considered employers as defined by I.C. §6-2103(4)(b). The IPPEA provides a cause of action “for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.” I.C. §6-2101. “Employer means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees

retirement system..." I.C. §6-2103(4)(a). Furthermore, an "[e]mployer' includes an agent of an employer," I.C. §6-2103(4)(b), with no provision of the statute specifically exposing an agent of an employer to any individual liability. Statutory interpretation is necessary to determine whether Mr. Ribí and Mr. Briscoe fall into the definition of employer, as defined by the IPPEA.

When determining the meaning of words in a statute this Court is instructed to consider "(1) [t]he language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent." I.C. § 73-113. Where the meaning of a statute and the words within it are clear, this Court is confined to follow that meaning and may neither add to nor take away by judicial construction. *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First Nat. Bank*, 117 Idaho 29, 784 P.2d 885 (1989). The plain meaning of a statute will prevail unless following such a meaning would lead to an absurd result. *Gibson v. Bennett*, 108 P.3d 417, 141 Idaho 270 (2005). Furthermore, unambiguous language in a statute must fully interpreted by its plain meaning by courts applying the statute unless clearly expressed legislative intent is contrary. *Kenneth F. White, Chtd. v. St. Alphonsus Regional Medical Center*, 31 P.3d 926, 136 Idaho 238 (2001) review denied. Where words are used in a statute that have a well-known meaning at common law, they are presumed to have been used in that sense. *State v. Schulz*, 151 Idaho 863, 867 (2011), *See State v. Oar*, 129 Idaho 337, 340, 924 P.2d 599, 602 (1996) (quoting *Lorillard v. Pons*, 434 U.S. 575, 583, 98 S.Ct. 866, 871, 55 L.Ed.2d 40, 47 (1978)).

Here, this Court must determine whether an IPPEA action can be filed against individuals who are elected officials and make decisions for a government employer. An IPPEA claim is purely statutory. *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 558, 212 P.3d 982, 988 (2009). It is purely a statutory claim against government employers. *Id.* Although, this holding in *Portneuf* is clear, that case did not directly address the question presented here. Nevertheless, looking at the structure and context of the IPPEA, a claim may be brought against a political subdivision or governmental entity, but not against an individual agent or member of that entity.

The question is whether I.C. § 6-2103(4)(b) creates individual liability. Defendants essentially concede that Mr. Ribí and Mr. Briscoe are agents and thus fall under the agency analysis (and therefore subject the City of Sun Valley to potential liability), but argue that they are not subject to individual liability as they are not employers themselves. The IPPEA specifically includes the agents of employers into the definition of “employer”, when it stated “[e]mployer’ includes an agent of an employer.” I.C. §6-2103(4)(b). “Include,” from the Latin *Includere*, meaning “to shut in, keep within,” means “to confine within, hold as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used. ‘Including’ within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation.” *Black’s Law Dictionary* 763 (6th ed. 2009) citing *Premier Products Co. v. Cameron*, 240 Or. 123, 400 P.2d 227,228 (1965). The primary definition of “include” is of limitation; it is not primarily a conjunctive word,

although it can be. The word can mean two different things, which highlights the problem here.

While no Idaho case law is directly on point, numerous courts around the country, when analyzing similar statutes, have come to the conclusion that the “agent” language is only intended to hold employers liable and not supervisory employees, most citing *respondeat superior* liability as the reason for the inclusion of the word “agent.” *see Wathen v. General Electric Co.*, 115 F.3d 400, 406 (6th Cir. 1997); *Obst v. Microtron, Inc.*, 588 N.W.2d 550, 553-554 (Minn. Ct. App. 1999); *Reno v. Baird*, 957 P.2d 1333, 1337 (Cal. 1998) citing *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313–1314, (2d Cir. 1995), *Lenhardt v. Basic Institute of Technology, Inc.*, 55 F.3d 377 (8th Cir. 1995), *U.S. E.E.O.C. v. AIC Security Investigations, Ltd.*, 55 F.3d 1276 (7th Cir. 1995). These cases suggest a hypertechnical reading of the statute does imply personal liability. That is the situation here, in that a technical reading or expansive definition of “includes” suggests individual liability. However, a traditional meaning of “include” and the context of the statute means that the above cases are correct.

The statutory remedies do not support individual liability. IPPEA, I.C. § 6-2106, provides “any or all” of the following relief for employees: “(1) An injunction to restrain continued violation of the provisions of this act; (2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position; (3) The reinstatement of full fringe benefits and seniority rights; (4) The compensation for lost wages, benefits and other remuneration; (5) The payment by the employer of reasonable costs and attorneys’ fees; (6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general

fund.” Only the State of Idaho, or another governmental entity, not an individual, could provide much of the relief prescribed by the statute, further illustrating that the Idaho legislature did not intend to have supervisory employees be part of the definition of “employer.” An individual council member or commissioner could not individually take action to reinstate an employee or provide benefits.

There is a provision in the statute which has created additional ambiguity. I.C. § 6-2105(3) is the venue provision of the statute. It states, “[a]n action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.” I.C. § 6-2105(3). This suggests that an action could be filed against an individual. There are several problems with this, however. The first and second are the stated legislative intent codified in 6-2101, and the holding in *Van v. Portneuf*.

The third problem is that the remedies in the statute do not suggest individual liability. I.C. § 6-2104 sets forth the ways the chapter may be violated. It can only be violated by employers, not individuals engaging in particular conduct, unless a strained interpretation is used.

This is not to say there are no other possible causes of action for alleged conduct of individuals, but there is not an IPPEA claim. It can be dangerous for courts to overlook or ignore parts of a statute, but here the codified legislative intent, case law, and other parts of the statute lead to the conclusion that an individual cannot be sued notwithstanding 6-2105(3).

Taking all inferences in the non-moving party's favor, and looking only to the pleadings, a claim for relief has not been stated as to the claims brought against Mr. Ribí and Mr. Briscoe. Mr. Ribí and Mr. Briscoe in their individual capacities are not employers under the definition of the IPPEA. Therefore, the Plaintiff cannot bring a cause of action against them using the IPPEA.

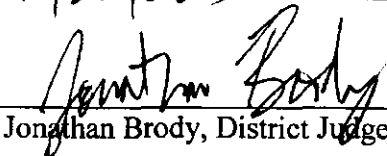
The Defendants seek sanctions pursuant to I.R.C.P 11. The issue presented is fairly arguable and not so clear under Idaho law that sanctions are warranted. Rule 11 is a court management tool to be applied narrowly. This Court finds that sanctions are not warranted.

CONCLUSION

For the foregoing reasons, the Defendants Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED

Dated: 11/22/2013

Signed: 
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 26 day of Nov., 2013, I filed the original and caused to be served a true and correct copy of the above and foregoing document: **MEMORANDUM DECISION GRANTING DEFENDANTS MOTION TO DISMISS** to each of the persons as listed below:

Eric B. Swartz
Jones & Swartz PLLC
1673 W. Shoreline Drive, Suite 200
Boise, Idaho 83707
Fax: 208-489-8988

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ ~~Via Facsimile~~ eric@jonesandswartzlaw.com

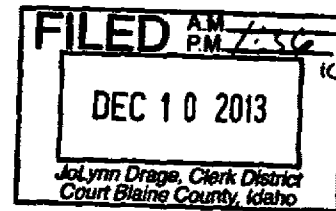
Kirtlan G. Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702
Fax: 208-383-9516

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ ~~Via Facsimile~~ Kirt@naylorhales.com

CLERK OF THE DISTRICT COURT

BY: CRigby
Crystal Rigby
Deputy Clerk

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com



Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO
ENFORCE SUBPOENA**

Defendant¹ The City of Sun Valley, by and through its counsel, Naylor & Hales, P.C., hereby submit this *Opposition to Plaintiff's Motion to Enforce Subpoena*. Plaintiff has made multiple allegations attempting to negate existing attorney client and work product privileges through bad faith affidavits. "An allegation of bad faith is a representation to the Court that opposing counsel has done something he knows to be in violation of relevant court rules or

¹Defendants Nils Ribi and DeWayne Briscoe were dismissed by this Court's Order dated November 22, 2013.

which he knows is frivolous." *Jornigan v. New Mexico Mut. Cas. Co.*, 228 F.R.D. 661, 663 (D. New Mexico 2004) (emphasis added). When determining discovery matters, the Court has discretion to assess the credibility of a witness' affidavit based on other contradictory evidence. See *Flaherty v. Coughlin*, 713 F.2d 10, 13 (2d Cir.1983), *Satcorp Int'l Group v. China Nat'l Import & Export Corp.*, 917 F.Supp. 271 (S.D.N.Y.), *vacated and remanded in part*, 101 F.3d (2d Cir.1996). This bad faith is evident through the currently filed affidavit of Mr. Willich in support of the pending motion and the fact that it is contradicted by Mr. Willich's own prior sworn testimony and other documents provided to this Court either via affidavit or in camera, and that Mr. Willich's testimony has changed based solely on Defendants' stated defenses. For these reasons, there is no evidence to rebut this Court's prior ruling with respect to a substantially similar subpoena issued to Ms. Ball, and as such, Plaintiff's motion to enforce should be denied.

I. BACKGROUND FACTS

On November 10, 2011, Michelle Frostenson, Sun Valley Treasurer, reported to Nils Ribi, Sun Valley City Council member, potential misuse of public funds and equipment by Plaintiff Sharon R. Hammer, Sun Valley City Administrator, and other City employees. (Affidavit of Nils Ribi ("Ribi Aff."), ¶ 3.) The City Council called a special executive session on November 11, 2011, and Ms. Frostenson presented her allegations before the entire City Council. (Ribi Aff., ¶¶ 4-5.) After the special executive session, Wayne Willich, then-Mayor of Sun Valley, and Adam King, City Attorney, spoke with Plaintiff about Ms. Frostenson's allegations. (Ribi Aff., ¶ 6; Affidavit of Adam King ("King Aff."), ¶ 5.)

²Attached as Exhibit C to the contemporaneously filed Affidavit of Kirtlan G. Naylor.

³Attached as Exhibit D to the contemporaneously filed Affidavit of Kirtlan G. Naylor.

On or about November 12, 2011, James R. Donoval, then-attorney for Plaintiff, sent Mr. Willich a letter, copied to the Sun Valley City Council and two citizens recently elected, but not yet sworn in as City Councilmembers, stating Plaintiff's intention to pursue litigation against Sun Valley and city officials in connection Plaintiff's allegations of harassment and the City's potential disciplinary action against her. (Ribi Aff., ¶ 8; King Aff., ¶ 6, Ex. A.) In addition, the heading found on the first page of the letter stated: "In Contemplation of Litigation." (King Aff., ¶ 6, Ex. A.) (emphasis in letter).

The City Council called a second special executive session on November 14, 2011, regarding the allegations of Plaintiff's and other employees' potential misuse of public funds and equipment. (Ribi Aff., ¶ 9; King Aff., ¶ 7.) Following the special executive session, the City Council authorized a special investigation into the allegations against Plaintiff, in part because litigation had been threatened, and co-authorized Mr. Willich and Councilmember Briscoe (as then Mayor-elect) to jointly supervise the investigation, including the hiring of an independent prosecutor. (Ribi Aff., ¶ 10; King Aff., ¶ 8; Affidavit of Dewayne Briscoe (Briscoe Aff.)⁴, ¶ 3)

On or about November 15, 2011, Mr. Donoval sent a second letter to Mr. Willich, copied to the City Council and the Councilmembers-elect, again stating that Mr. Donoval intended to file a lawsuit in connection with Plaintiff's allegations of harassment and the City's potential disciplinary action against her for the alleged misuse of public funds and equipment. (Ribi Aff., 11; King Aff., ¶ 9, Ex. B.) The second letter stated: "In Contemplation of Litigation." (King Aff., Ex. B.) (emphasis in letter). On or about November 16, 2011, Mr. Donoval sent a third letter to Mr. Willich, copied to the City Council and the Councilmembers-elect, which reiterated

⁴Attached as Exhibit F to the contemporaneously filed Affidavit of Kirtlan G. Naylor.

the prior two letters and proposed a settlement that would prevent the filing of a lawsuit. (*Id.*) This third letter also stated: "In Contemplation of Litigation." (Ribi Aff., ¶ 12; King Aff., ¶ 10, Ex. C..) (emphasis in letter). Mr. Donoval later stated via sworn affidavit that his specific intent of sending the three letters to the City Council was to expressly inform the City of Sun Valley of pending litigation regarding the allegations and alleged disciplinary actions taken against Plaintiff. (K. Naylor Aff., Ex. O, ¶¶ 8-9) Thus, the City Council was on notice as of November 12, 2011, of potential or threatened litigation, which was before the City Council even authorized the independent investigation on November 14, 2011.

On November 17, 2011, Mr. King contacted Patricia L. Ball, of Management Northwest, and another possible investigator, regarding the City's desire to possibly retain services for a fact-finding investigation into various allegations that could be the subject of litigation. (King Aff., ¶ 11; Affidavit of Patricia L. Ball ("Ball Aff.")⁵, ¶ 3.) Ms. Ball was interviewed by then-Council President Dewayne Briscoe, Mr. King and Mr. Willich on or about November 21, 2011. (King Aff., ¶ 12; Ball Aff., ¶ 4.) In the interim, on November 18, 2011, Plaintiff was placed on paid administrative leave. (King Aff., ¶ 13.)

After Mr. Willich and Councilmember Briscoe interviewed and selected Ms. Ball as the independent investigator, the City of Sun Valley retained Ms. Ball on November 21, 2011, for the purpose of conducting an investigation into the alleged violations of City policy. (King Aff., ¶ 14; Ball Aff., ¶ 5.; Briscoe Aff., ¶ 3) At that time, Mr. King was to be Ms. Ball's legal contact. (King Aff., ¶ 14; Ball Aff., ¶ 7.) A formal engagement letter was signed by Ms. Ball and Mr. Willich on November 23, 2011. (King Aff., ¶ 14; Ball Aff., 5.)

⁵Attached as Exhibit E to the contemporaneously filed Affidavit of Kirtlan G. Naylor.

As anticipated, on November 21, 2011, Mr. Donoval filed a complaint on behalf of Plaintiff in Idaho's Fifth District Court, Blaine County, against Sun Valley, Nils Ribí and Adam King.⁶ (King Aff., ¶ 15; Ribí Aff., ¶ 13.) Mr. King forwarded the complaint to the City's insurance carrier and on November 22, 2011, Kirtlan G. Naylor, Naylor & Hales, P.C., was assigned to provide legal defense for Sun Valley. (King Aff., ¶ 17.)

Ms. Ball arrived in Sun Valley to begin conducting interviews on November 28, 2011. (Ball Aff., ¶ 8.) Sun Valley officials decided on or near that day that Mr. Naylor would be Ms. Ball's primary legal and process contact, and all legal coordination was to go through him. This is reflected by communications made between the parties which are submitted *in camera* before this Court. (See generally, K. Naylor Aff., Ex. A, SV IN CAMERA 3-14; Ex. B, SV IN CAMERA 50-52, 55, 57-58, 64) Ms. Ball was to report substantive issues directly to Mr. Briscoe, Mr. King and Mr. Willich. (King Aff., ¶ 18; Ball Aff., ¶ 8.) Throughout the course of Ms. Ball's investigation, she sought legal advice and guidance for the investigation through Mr. Naylor, with full approval and consent of Sun Valley. (Ball Aff., ¶ 9; See generally, K. Naylor Aff., Ex. A, SV IN CAMERA 15, 26-27, 31-32; Ex. B, SV IN CAMERA 52-53, 55, 58-61) In addition, Mr. Willich sought and received legal advice and direction regarding the investigation and other matters pertaining to Plaintiff's litigation throughout the entire period of the investigation. (See generally, K. Naylor Aff., Ex. A, SV IN CAMERA 16-29, 31-37; Ex. B, SV IN CAMERA 50, 52, 56-57, 59-61)

On November 30, 2011, by direction from Mr. Willich, Mr. Briscoe and Mr. King, Mr. Naylor informed Ms. Ball that the scope of the investigation was to be expanded into additional

⁶Blaine County Case No. CV-2011-928.

and newly brought allegations. (Ball Aff., ¶ 10; K. Naylor Aff., Ex. B, SV IN CAMERA 64) Ms. Ball conducted the investigation into the various allegations over the following weeks. (Ball Aff., ¶ 11.) This included approximately four (4) days of interviewing witnesses, additional telephonic interviews, several days of evidence review, analysis, communications and drafting the report. (*Id.*) Ms. Ball completed the factual basis of her report on December 9, 2011, and thereafter presented a draft version of the report for review to Mr. Willich, Mr. Briscoe, the City Council, Mr. King and Mr. Naylor on December 12, 2011. (Ball Aff., ¶ 12.) After making corrections, some even requested by Mr. Willich himself, Ms. Ball finalized her report and analysis on December 20, 2011. (Ball Aff., ¶ 13; K. Naylor Aff., Ex. B, SV IN CAMERA 57) The report consisted of Ms. Ball's application of the discovered facts to potential violations of city policy. (Ball Aff., ¶ 14.)

The above narrative regarding Ms. Ball's investigation was corroborated by further sworn statements and testimony by Plaintiff and Mr. Willich. In an affidavit signed on January 5, 2012, Plaintiff affirmatively swore that Mr. Willich stated to her on December 16, 2011, "that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days." (K. Naylor Aff., Ex. G, ¶ 5) In another affidavit from Plaintiff signed on January 10, 2012, Plaintiff personally understood that Ms. Ball issued her "final report" in regards to her investigation on December 20, 2011. (K. Naylor Aff., Ex. H, ¶ 11) This was based on Plaintiff's own review of Ms. Ball's billing statements and her conversations with Mr. Willich at or around the time of her return from administrative leave on December 27, 2011. (*Id.*, ¶¶ 12-13)

In sworn hearing testimony of January 11, 2012, Mr. Willich's telling of his narrative

also largely corroborates the narrative as stated above. There, in response to questioning by Mr. Donoval himself, Mr. Willich testified that when the investigation commenced, it specifically was not “solely in regards to allegations against Plaintiff.” (K. Naylor Aff., Ex. I, 63:8-13, 45:15-46:11) He further testified Ms. Ball performed her investigation during the period of November 18, 2011 to approximately December 20, 2011. (*Id.* at 19:20-24; 21:3-11) He also clarified repeatedly that he reviewed a “summary,” “draft,” or “interim” report in meeting with Ms. Ball, Mr. King, Mayor Briscoe, and Mr. Naylor on or about December 12, 2011. (*Id.* at 23:12-25, 24:7-25:3) In addition, Mr. Donoval, as counsel for Plaintiff and during the questioning of Mr. Willich, affirmatively stated in open court and under oath that “[t]he report wasn’t issued until December 20th approximately.” (*Id.* at 72:10-13)

Mr. Willich then produced his first sworn affidavit in support of Plaintiff’s allegations made to the Idaho Human Rights Commission, dated February 24, 2012. There, he characterizes Ms. Ball’s investigation as to pertaining to “several matters,” and not solely an investigation into the disciplinary allegations against Plaintiff. (K. Naylor Aff., Ex. J, ¶¶ 15-16) While he also does not state the specific date of the completion of Ms. Ball’s services, he does state that she presented her findings in “mid-December of 2011,” and that he then notified Plaintiff on December 23, 2011 that she would be back on active duty status. (*Id.*)

However, once this Court granted Defendant’s motion to quash in the *Ribi v. Donoval* matter on October 17, 2012, (Blaine County Case No. CV-2011-1040), Plaintiff began attempting to manipulate the previously established factual narrative to suit her legal strategy. As will be discussed below, the legal basis and argument behind that motion to quash, as advanced

by Mr. Donoval and current Plaintiff's counsel,⁷ is nearly identical to what is currently argued by Plaintiff here. In that case, this Court quashed the subpoena against Ms. Ball on grounds that her work was privileged as work product. (Aff. of Naylor, Ex. M, p. 3-6) Since that time, Mr. Donoval and Plaintiff have reacted to this Court's decision granting that motion to quash by manipulating the factual narrative through sworn statements of Mr. Willich in an attempt to carve Ms. Ball's investigation out of the realm of work product and therefore compel Ms. Ball to produce all documents, communications, and work product from that investigation.

Shortly after this Court quashed Mr. Donoval's subpoena, Mr. Donoval moved for reconsideration, and included two separate affidavits of Mr. Willich, one prior to Defendant's response to reconsideration and one after. The first affidavit filed in support of reconsideration on November 8, 2012, is the first version of the narrative currently pursued in the current action as sworn to by Mr. Willich. In that affidavit, Mr. Willich characterizes the report he reviewed on either December 9 or 12, 2012, as simply the "Written Investigation Report," but Mr. Willich states that this report was "considered final at that time," instead of being a "draft" or "interim" report as he had previously testified. (K. Naylor Aff., Ex. K, ¶ 22) This is also the first mention of Mr. Willich's alleged affirmative action in terminating Ms. Ball's services, wherein Mr. Willich swears that he considered Ms. Ball to have concluded "any and all work she had been assigned to perform on behalf of the City of Sun Valley" on December 9, 2012. (*Id.* at ¶¶ 22, 27)

Mr. Willich then submitted a supplemental affidavit in support of reconsideration on December 7, 2012. One substantial change found between these affidavits, just filed one month

⁷Attorneys Eric B. Swartz and Joy M. Vega, currently counsel of record for Plaintiff, entered a notice of association of counsel on May 1, 2012, on behalf of Mr. Donoval in Blaine County Case No. CV-2011-1040, but Mr. Donoval continued to provide the majority of legal filings and argument.

apart, is Mr. Willich's changing characterization of Ms. Ball's draft report presented on December 12, 2012. In this affidavit, Mr. Willich swears that he was provided a copy of Ms. Ball's "Final Patti Ball Report" on December 12, 2012 and December 13, 2012. (K. Naylor Aff., Ex. L, ¶ 4) This is in obvious contradiction to his January 11, 2012 sworn courtroom testimony where he specifically clarified that the report he reviewed was a "summary," "draft," or "interim," report. In addition, Mr. Willich alleged that the completion date of Ms. Ball's services was December 13, 2011. (*Id.* at ¶ 8)

At that point in the timeline, this Court granted a stay against Mr. Donoval's motion for reconsideration in the *Ribi v. Donoval* matter. Instead of seeking that stay to be lifted and to simply argue a fully briefed motion for reconsideration, Plaintiff chose to issue a nearly identical subpoena in the current matter to Ms. Ball on May 6, 2013, seeking much of the same documents, communications, and investigation product as sought in the previous subpoena. (*Compare* Ball Aff., Ex. A; Swartz Aff., Ex. B) As Ms. Ball was an agent of the City of Sun Valley, Defendant responded to the subpoena on her behalf on June 24, 2013 and provided all non-privileged documents and lodged objections as to privileged information. (Swartz Aff., Ex. C) Plaintiff then began attempts to meet and confer to seek production of those privileged documents. (Swartz Aff., Ex. E, G, I)

During the meet and confer correspondence, Defense counsel highlighted that not only had this very same Court held that Ms. Ball's investigative materials were work product and privileged, but also noted that Mr. Willich's contradictory sworn statements filed in support of Plaintiff's motion for reconsideration did not support Plaintiff's legal argument that no such work product privilege existed. (See Swartz Aff., Ex. F, H, and J) In a good faith effort to

provide Plaintiff with the necessary evidence to avoid a discovery dispute, Defendant provided Plaintiff with documented evidence which directly contradicted Mr. Willich's affidavits filed in support of the previous reconsideration. (Swartz Aff., Ex. H, J) This evidence included two legal documents signed by Mr. Willich on December 16, 2011: a Garrity notice of administrative investigation and a "Notice of Continued Paid Administrative Leave Pending Investigation," both of which directly contradicted Mr. Willich's previously filed affidavits in support of reconsideration that Ms. Ball ended her investigation on either December 9th or 13th. (See Swartz Aff., Ex. H) Of note is that both of these signed legal documents corroborate the pre-October 2012 narrative and Mr. Willich's own previously sworn testimony that Ms. Ball's investigation lasted until December 20, 2012. (Swartz Aff., Ex. H)

In response to this good faith effort to provide Plaintiff with evidence that any motion to compel production of these privileged documents would be frivolous, Plaintiff produced yet another version of the ongoing series of Mr. Willich's contradictory sworn statements and testimony in order to avoid Defendant's legal position. In this latest retelling, Mr. Willich again swears to the statement that there was no discussion or intent for the investigation into the allegations of Plaintiff's misconduct to be used in any potential or threatened litigation. (Willich Aff. in Support of Motion to Compel, ¶¶ 16, 19-21) He also asserts that at the City Council meeting on November 14, 2011, "the Sun Valley City Council directed that I commence an investigation of the misconduct allegations that Council Member Ribí and Former Treasurer Frostenson had made against Former Administrator Hammer." (*Id.* at ¶ 15)

He continues and asserts that this investigation "was solely to perform a disciplinary investigation related to Former Administrator Hammer, solely for internal Sun Valley purposes."

(Willich Aff. in Support of Motion to Compel, ¶¶ 16, 18, 19, 20) He asserts that as of December 12, 2011, Ms. Ball had submitted her final report, now named the “Authorized Ball Report,” and that as of December 12, 2011, he “considered Investigator Ball to have concluded any and all work she had been assigned to perform on behalf of Sun Valley,” and that he affirmatively indicated to Ms. Ball, “that her services to Sun Valley were completed,” as of that date. (*Id.* at ¶¶ 52-55) For the first time, he references the December 16, 2011 meeting with Mr. Naylor, which had previously been unacknowledged until Defendant highlighted legal actions taken by Mr. Willich on or about that date, and attempts to explain at length what occurred at that time. (*Id.* at ¶¶ 61-81) In short, Mr. Willich’s latest affidavit attempts to subvert and negate any attorney-client privilege or work product privilege previously claimed by Defendant, but fails as to the utter unreliability of his affidavit when viewed in the context of his prior, inconsistently sworn statements.

II. ARGUMENT

A. Plaintiff has Failed to Sufficiently Meet and Confer Regarding Defendant’s Response to Interrogatories and Requests for Production.

In its Motion to Compel, Plaintiff seeks this Court to compel production not only of Ms. Ball and the subpoena issued to her, but also from Defendant regarding “any and all documents related to the Hammer Disciplinary Investigation.” (Memorandum in Support of Motion to Enforce, p. 11-12) Plaintiff bases her motion to compel on both the subpoena issued to Ms. Ball, and from Plaintiff’s First Interrogatories and Request for Production⁸. Along with her motion,

⁸Plaintiff’s Motion specifically requests relief from this Court regarding “Defendant City of Sun Valley’s Answer to Interrogatory No. 1 and Responses to Requests for Production No. 4, 6, 7, 8, 12, 13, 14, 15, 16, 17, 22, 25, 26, 27, 28, 29, 30, 31.” (Plaintiff’s Motion to Enforce Subpoena and Compel the Production of Documents Withheld From Production in Discovery

Plaintiff's counsel has attached evidence of attempts to meet and confer with regards to the response to Ms. Ball's subpoena. However, clearly absent is any attempt to meet and confer with respect to Sun Valley's Answers and Responses to Plaintiff's First Discovery Requests.

Plaintiff clearly makes meet and confer requests based on Subpoena Requests Nos. 3-5, 7-10, 12, 13, and 15. (See Swartz Aff., Ex. E, I) There is absolutely no mention of any objections to Defendant's Answers and Responses to Plaintiff's First Discovery Requests. Defendants have lodged valid objections to all cited discovery requests submitted by Plaintiff. (See generally, Swartz Aff., Ex. A) As there has been no meet and confer with regards to these discovery requests, any motion to compel regarding these requests is inappropriate and should be denied.

B. The Motion to Compel Should be Denied Because it Seeks Privileged Work Product.

As previously held by this Court in the *Ribi v. Donoval* matter, the discovery sought by Plaintiff from Ms. Ball through the nearly identical subpoena there was privileged as work product. In its prior decision, the Court specifically held that "Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation." (K. Naylor Aff., Ex. M, p. 4) Work product is generally immune from discovery. See I.R.C.P. 26(b)(3). Work product refers to "documents and tangible things . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent). . . ." *Id.* In holding that such work product protection existed, this Court noted that it would cover all non-waived work

and in Response to Subpoena, p. 2)

product, including communications which are the heart of Plaintiff's motion to compel. (K.

Naylor Aff., Ex. M, p. 4-5)

In this case, the subpoena demands nearly identical production as that sought in the *Ribi v. Donoval* matter: all documents generated in connection with Ms. Ball's disciplinary investigation. (*Compare* Ball Aff., Ex. A; Swartz Aff., Ex. B) However, as previously held by this Court and as continually argued here, all of these materials were prepared in anticipation of litigation and are therefore immune from discovery as the work-product of an agent of Sun Valley. *See* I.R.C.P. 26(b)(3). The timeline described above makes it clear that the investigation was conducted and all related documents and items were prepared in anticipation of litigation. The very reason Ms. Ball was retained by Sun Valley was because of allegations of misconduct brought by City personnel, which raised issues of potential violations of City policy and law, combined with the subsequent threat of a lawsuit by Mr. Donoval, on behalf of Plaintiff. Mr. Donoval, in fact, sent three letters to Mr. Willich, the City Council and Councilmembers-elect, all of which stated "In Contemplation of Litigation." One of these letters was even sent before the City Council authorized the investigation into Plaintiff's conduct on November 14, 2011.

In light of the legal reasoning behind Court's prior ruling against Mr. Donoval in October 2012, Plaintiff has produced contradictory affidavits from Mr. Willich that attempt to overcome the previously established work product privilege. These few sworn statements made post-October 2012 lack credibility when weighed against the pre-October 2012 corroborated testimony of other persons, *in camera* evidence contemporaneous at the time of the investigation, and Mr. Willich's internally inconsistent sworn statements. As detailed above, both Councilmember Ribi and Mr. King affirmed that the investigation was authorized in part due to

the threatened litigation communicated by Mr. Donoval. Even Mr. Willich and Plaintiff herself supported such factual inferences through their sworn testimony lodged prior to this Court's granting Defendant's motion to quash.

While Mr. Willich now attempts to obscure the obvious, it is blatantly clear (and even sworn to by Mr. Donoval himself), that there was threatened and potential litigation regarding any disciplinary action taken against Plaintiff prior to the City Council of Sun Valley's authorization of the independent investigation on November 14, 2011. It is unreasonable to assume that Mr. Willich's current affidavit is credible when it pretends that the investigation into Plaintiff's alleged misconduct was not performed in anticipation of litigation, when Mr. Donoval swore that he sent a letter to inform the City of Sun Valley of that very litigation. To quote Mr. Donoval himself, in the November 12, 2011 letter addressed to Mr. Willich and copied to then all current and members-elect of the City Council:

Should the City of Sun Valley choose to either not hold the Executive Session described above or to fully dismiss all allegations of mis-management or other wrong doing against Plaintiff, with prejudice, by Friday, November 18, 2011, on Monday, November 21, 2011, we will file the aforementioned harassment claims against Mr. Ribí and the City of Sun Valley and let the litigation process, and the inevitable negative publicity to the City of Sun Valley that will ensue, take its course. Any further disciplinary action taken by the City of Sun Valley against Plaintiff thereafter will result in the addition of damage to reputation and retaliatory discharge claims against Mr. Ribí and the City of Sun Valley.

(King. Aff., Ex. A, p. 5) Mr. Donoval himself specifically tied any potential disciplinary action against Plaintiff to threatened litigation. Even if Mr. Willich could be taken at his word in that the investigation was "solely" for an internal disciplinary matter, Mr. Donoval had already threatened that any disciplinary action taken against Plaintiff (even as a "solely" internal City of

Sun Valley matter) would be part and parcel to Plaintiff's threatened litigation regarding Councilmember Ribí. Therefore it is unreasonable and impossible for Mr. Willich to now semantically divorce Ms. Ball's investigation from the threat of potential litigation, seeing as Plaintiff's own legal counsel was the one who married them together, and did so before any investigation was contemplated by the Sun Valley City Council or Mr. Willich.

This combination of the investigation with Plaintiff's 2011 IPPEA lawsuit was only further confirmed with the filing of the lawsuit itself. Plaintiff alleges in that lawsuit, filed on November 21, 2011, that the mere act of investigating Plaintiff would be considered an "adverse action" under the Idaho Protection of Public Employees Act, and therefore, sought damages based on this alleged "adverse action" taken against her. (K. Naylor Aff., Ex. N, p. 23, 25-26) Mr. Donoval's previous threat that his pending litigation would involve any discipline taken against Plaintiff was carried out, and the very investigation authorized by the City Council was cited as a direct basis for Plaintiff's alleged damages in her litigation.

Further, Plaintiff misrepresents applicable Ninth Circuit law to this Court through citation to an overruled standard in support of her argument that if Ms. Ball's investigation would not have been generated "but for" litigation, then it must be disclosed. (Memorandum in Support of Motion to Enforce, p. 23) Significantly, Idaho has not adopted any holding as relating to the dual-purpose issue of work product protection. Plaintiff attempts to persuade this Court by citing to an overruled Ninth Circuit case requiring a "but for" litigation standard, *United States v. Torf (In re Grand Jury Subpoena)*, 350 F.3d 1010, 1018 (9th Cir. 2003). In fact, this case was overturned directly to reject the "but for" standard proposed by Plaintiff and the Ninth Circuit adopted the more permissive "because of" standard. See *In re Grand Jury Subpoena (Mark*

Torf/Torf Envtl. Mgmt.), 357 F.3d 900, 908 (9th Cir. 2004) (*Torf*).

The “because of” standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the “document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]”

* * *

The question of entitlement to work product protection cannot be decided simply by looking at one motive that contributed to a document's preparation. The circumstances surrounding the document's preparation must also be considered.

Id. (citations omitted) (emphasis added). In *Torf*, the 9th Circuit held that documents were entitled to work product protection where, “taking into account the facts surrounding their creation, their litigation purpose so permeates any non-litigation purpose that the two purposes cannot be discretely separated from the factual nexus as a whole.” *Id.* This is precisely the issue at hand with Ms. Ball’s investigation.

Throughout Mr. Willich’s sworn statements and testimony, even post-October 2012, he has never stated that he, nor the City Council, contemplated the hiring of an independent investigator or the commencement of an independent investigation regarding the disciplinary allegations against Plaintiff until November 14, 2011. (Willich Aff. in Support of Motion to Compel, ¶ 15) This was clearly after Mr. Donoval had already threatened litigation on November 12, 2011. There is no evidence that such investigations were common practice when addressing disciplinary matters, nor that the City had any policies in place that would make such an investigation a typical practice outside of potential or threatened litigation.⁹ Councilmember Ribi

⁹Although Defendant does not believe there to be any such evidence, in light of a potential supplemental affidavit from Mr. Willich (or other witness) which would allege evidence to support a common practice or policy of hiring special investigators to address

and Mr. King both have stated that the investigation was commenced, in part, to address the potential and threatened litigation from Mr. Donoval. Mr. Donoval himself threatened that his potential litigation would be impacted by any disciplinary actions taken against Plaintiff, which actions would arise from the findings made via Ms. Ball's disciplinary investigation.

Plaintiff also attempts to argue that because Mr. Willich swears that as of December 12, 2011, Ms. Ball's work was completed and her services were finished, that anything that happened after this point was no longer authorized work product and is subject to disclosure. This argument might have merit, were Mr. Willich's statements true. While Mr. Willich swears that he gave Ms. Ball no authority or direction to modify the "Final Ball Report" in any manner after December 12, 2011, there are email communications provided *in camera* which contradict this assertion. (Compare K. Naylor Aff., Ex. B, SV IN CAMERA 57 with Ex. L, ¶ 14) As referenced above, Mr. Willich also told Plaintiff as of December 16, 2011, that Ms. Ball's investigation would be completed in a few days, not that it had already been completed. He also signed continuing notices of paid administrative leave pending an ongoing investigation well after December 12, 2011, when he claimed that Ms. Ball had completed all her duties and the investigation was completed.

Ultimately, Plaintiff now attempts to separate Ms. Ball's investigation from all the factual circumstances around it by relying solely upon Mr. Willich's few sworn statements made after this Court's October 2012 ruling, trying to both ignore then-anticipated litigation and retroactively limit the time of Ms. Ball's actual investigation. However, when looking at the context of all the factual inferences, and especially when looking at the testimony and statements

disciplinary matters outside of potential or threatened litigation, Defendant would request an opportunity to present any rebuttal evidence at the December 17, 2013 hearing.

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION TO ENFORCE SUBPOENA - 17**

made prior to October 2012 and this Court's granting Defendant's motion to quash, it is evident that Ms. Ball's investigation was commenced and performed in anticipation of litigation, and that her final report was submitted on December 20, 2011, and to that extent, work product protection applies to all communications from Ms. Ball, as this Court as already held.

C. Any Documents That Might Be Publically Waived as to the Work-Product Privilege Via Publication have been Produced.

Plaintiff correctly asserts that portions of the written report containing the findings of Ms. Ball's investigation pertaining to Plaintiff were published on the website of the *Idaho Mountain Express* beginning approximately November of 2012, although they are no longer published there. These third party disclosures did not include the accompanying and referenced exhibits, nor did they include Ms. Ball's findings regarding Plaintiff's allegations against Councilmember Ribi (which were reported separately) and were produced pursuant to a public records request submitted to the Blaine County Prosecutor.¹⁰ (See generally, *Donoval Aff.*, Ex. F) However, Defendant has already provided the full draft and final copies of all of Ms. Ball's reports, including the accompanying exhibits, to Plaintiff via discovery, and under the stipulated protection order as made by this Court to maintain the confidentiality of the exhibits. (*K. Naylor Aff.*, ¶ 18) Thus, Plaintiff's request for production of these documents is moot.

Additionally, there is no legal precedent for this Court to consider the publication of the findings of Ms. Ball's report to have to have waived all drafts, documents, exhibits, communications, and other investigative materials along with the published findings sections. Idaho does not have rules or case law regarding waiver or the scope of waiver of the work

¹⁰Sun Valley did not produce these documents to the Intermountain Express, but instead they were provided pursuant to a public records request to the Blaine County Prosecutor.

product protection. However, the Federal Rule of Civil Procedure 26(b)(3) is similar to Idaho Rule of Civil Procedure 26(b)(3). The extent of a waiver of work product protection under the FRCP 26(b)(3) is determined by Federal Rule of Evidence 502, which expressly applies to both attorney client privilege and work product protection. Under that rule, work product protection is only waived as to the subject matter of the disclosed work product when fairness requires, and is limited to only that subject matter, and does not create a blanket waiver of the work product privilege as to the entire case. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100-01 (9th Cir. 2010).

Plaintiff attempts to mix and match precedent regarding different standards applicable to either attorney-client communications or protected work product documents in order to manufacture a blanket waiver of all of Ms. Ball's communications. Plaintiff correctly cites to the legal standard that "voluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject." *Weil v. Investment/Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 23 (9th Cir. 1981). What Plaintiff is arguing presently, however, is that voluntary waiver of a single document waives all communications that could be connected in any tangential manner to that document. This mixing of standards is not supported by any legal precedent. In fact, in a case cited by Plaintiff, the exact opposite is true:

We conclude, then, that while the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself for waiver of the work product privilege.

Permian Corp. v. United States, 665 F.2d 1214, 1219 (D.C. Cir. 1981), quoting *United States v. AT&T*, 642 F.2d 1285, 1299 (D.C. Cir. 1980) (emphasis added). Thus, it is an inapplicable argument that because the documents regarding Ms. Ball's findings pertaining to Plaintiff may

have been disclosed by the Blaine County Prosecutor, that all communications that Ms. Ball made are likewise disclosed. Plaintiff has not produced any evidence that Defendant has voluntarily disclosed any attorney-client communications between Mr. King or Mr. Naylor nor any of the work product communications currently retained from production, and as such, the privileges remain intact.

As noted by this Court previously, Plaintiff can seek the underlying facts of the communications made by Ms. Ball via deposition or other discovery, but Plaintiff is not entitled to Sun Valley or its agents' work product. (K. Naylor Aff., Ex. M, p. 5) Publication of Ms. Ball's report as to the isolated findings regarding Plaintiff do not waive other communications made which are not required by fairness to be disclosed. Defendant has preserved the privileges and protections by withholding those communications and producing a privilege log to Plaintiff to demonstrate the basis behind those communications. As the draft and final reports of Ms. Ball's findings were already disclosed to Plaintiff, and as any publication of her findings does not create a blanket waiver as to all the work product, her communications are still protected. In addition, Plaintiff's argument that the "common interest" privilege does not apply due to the lack of the underlying work product privilege is inapplicable because the communications are still protected as work product and were not disclosed by Defendant to any adverse third parties at any time. (See Memorandum in Support of Motion to Enforce, p. 26-27) In similar fashion, as this Court previously held, all communications made by Ms. Ball are protected as work product, and as such, Plaintiff's argument that thirty emails which were sent to or copied to employees other than Mr. Willich is irrelevant, as Plaintiff has failed to identify any of the parties as adverse parties to Defendant. (Compare K. Naylor Aff., Ex. M, p. 5; with Memorandum in Support of

Motion to Enforce, p. 30)

D. Plaintiff's Arguments that Mr. King and Mr. Naylor Were Unauthorized to Participate in Ms. Ball's Investigation is Not Supported by Any Credible Evidence.

Plaintiff argues that Mr. Naylor and Mr. King were never authorized in any capacity with regards to the 2011 IPPEA Lawsuit, which argument strains common sense and is flatly contradicted by the record. Primarily, Plaintiff argues that Mr. Naylor never provided an official retention letter to signify that he represented the City of Sun Valley. (Memorandum in Support of Motion to Enforce, p. 17-21) However, Mr. Donoval has actually provided evidence of such retention through his currently filed affidavit. When an insured under ICRMP seeks that ICRMP provide a defense for a claim covered under the insurance policy, the insured has already contractually waived any right to choose counsel while ICRMP provides that defense. (Donoval Aff., Ex. L) Therefore, Plaintiff's claims that Mr. Willich never authorized Mr. Naylor are ill-founded, because Mr. Willich actually did authorize ICRMP to choose counsel for this matter by virtue of entering the City of Sun Valley into a contractual agreement with ICRMP in order to have them provide a defense for covered claims with counsel of ICRMP's choosing. As also produced by Mr. Donoval, there is clear evidence that ICRMP provided a defense of Plaintiff's 2011 IPPEA lawsuit as a claim covered under its policy. (Donoval Aff., Ex. J) Additionally, as generally exhibited by the *in camera* emails produced to this Court, there were multiple communications between Mr. Naylor and Mr. Willich throughout his tenure as the Mayor of Sun Valley. (See generally, K. Naylor Aff., Ex. A)

Plaintiff also attempts to use these letters from ICRMP to somehow establish that the investigation into Plaintiff was not considered by ICRMP to be a claim and therefore was not

part of their coverage. (Memorandum in Support of Motion to Enforce, p. 21) However, this is based on Plaintiff individually seeking coverage from ICRMP, and has nothing to do with the City of Sun Valley's defense of claim provided by ICRMP. (Donoval Aff., Ex. L) Mr. Donoval had apparently requested that ICRMP provide a defense for Plaintiff based on the ongoing investigation of her. ICRMP correctly stated that the investigation itself, as pertaining to Plaintiff, was not a lawsuit. (*Id.*) However, Plaintiff apparently wholesale ignores the true basis of ICRMP's defense extended to the City: Plaintiff's filed a very active lawsuit against the City. (Donoval Aff., Ex. J) Plaintiff's arguments make no sense whatsoever, because to this day, there has never been a lawsuit filed against Plaintiff pertaining to her work at the City of Sun Valley which might qualify her for potential ICRMP representation.

Plaintiff argues and Mr. Willich fervently swears in his latest affidavit that Mr. Naylor was: 1) never authorized to direct or actively participate in the Hammer Disciplinary Investigation; or 2) never authorized to directly communicate with Investigator Ball. (Memorandum in Support of Motion to Enforce, p. 21-22; Willich Aff. in Support of Motion to Compel, ¶¶ 30-40) As demonstrated by the communications provided *in camera* to this Court, it is evident that this is not the case, because there are multiple instances where Mr. Willich received communications that clearly indicated that Mr. Naylor and Mr. King were participating in the administration of the investigation, and there is no evidence of any objection by Mr. Willich. (See generally, K. Naylor Aff., Ex. A and B)

The reality is that while Mr. Willich now attempts to make sworn statements to avoid the attorney client privilege by retroactively limiting Mr. Naylor's authority, Mr. Willich's current affidavit is internally nonsensical to the point where it is not at all credible. He first states that he

“never considered or recognized Attorney Naylor to have been either Sun Valley’s attorney or my personal attorney,” and makes multiple allegations where he says that Mr. Naylor was never authorized by Mr. Willich to appear at hearings on behalf of the City of Sun Valley. (Willich Aff. in Support of Motion to Compel, ¶¶ 61-64) However, even after asserting that Mr. Naylor acted against the best interest of the City of Sun Valley, “from the moment he was appointed,” Mr. Willich paradoxically came all the way from Sun Valley to meet with Mr. Naylor in his Boise office on December 16, 2011. (*Id.* at ¶ 66) Mr. Willich then allegedly reasserts how “vastly different” the City of Sun Valley’s interests were to Mr. Naylor’s alleged interests, and how Mr. Willich was not seeking any legal advice from Mr. Naylor, and that he was, “clearly on a ‘different team.’” (*Id.* at ¶¶ 68, 72-74) Then, inexplicably, Mr. Willich details alleged legal advice sought by Mr. Willich, and provided by Mr. Naylor at the December 16, 2011 meeting, regarding Mr. Naylor’s legal analysis of employee whistleblowers, continuing investigation of Plaintiff, alleged misconduct of Ms. Frostenson, settlement negotiations with Plaintiff, and placing Plaintiff and other employees on continued administrative leave. (*Id.* at ¶¶ 69, 75-77, 79-81) This legal advice included signing legal notices of continued administrative leave pending investigation that were prepared by Mr. Naylor and signed by Mr. Willich. (*Id.* at ¶ 81)

Most interestingly, Mr. Willich states that Mr. Naylor allegedly wanted to forward information to the Blaine County Prosecutor regarding potential criminal charges, and Mr. Willich refused to do so, allegedly telling Mr. Naylor, “that doing so was not part of his job in defending against the Hammer Retaliation Lawsuit.” (Willich Aff. in Support of Motion to Compel, ¶ 79) Yet, confusingly enough, even after multiple assertions that Mr. Naylor was allegedly diametrically opposed to the best interests of the City of Sun Valley, Mr. Willich signed

an authorization to allow Mr. Naylor to do exactly what Mr. Willich claims he had just told him was not part of his job. (*Id.* at ¶ 79)

Thus, Mr. Willich's affidavit contains these bizarre contradictions: that while Mr. Willich believed that Mr. Naylor was allegedly neither working on behalf of the City of Sun Valley, nor did he have the City's best interests at heart, Mr. Willich traveled over 150 miles to discuss legal matters in Mr. Naylor's office. While Mr. Willich alleges that Mr. Naylor was not the attorney for the City of Sun Valley, and even goes so far as to admit that Mr. Naylor appeared at multiple hearings representing the City in an unauthorized capacity, Mr. Willich then signed multiple legal documents prepared by Mr. Naylor. While Mr. Willich alleged that Mr. Naylor had improperly influenced Ms. Ball's investigation and was not authorized to participate in any way regarding any investigations, Mr. Willich signed continuing notices of administrative leave at the express advice of Mr. Naylor for multiple city employees. While Mr. Willich allegedly asserts he forbade Mr. Naylor from providing information to the Blaine County Prosecutor, Mr. Willich signed a written authorization for Mr. Naylor to do just that.

In short, Mr. Willich swears that he "did not consider that [he] was seeking any legal advice from Attorney Naylor nor did [he] consider that Attorney Naylor was providing [him] with any advice," while then clearly swearing to specific instances where Mr. Willich sought legal advice from Mr. Naylor, which was then provided to Mr. Willich. (See Willich Aff. in Support of Motion to Compel, ¶ 68) This is not even considering the various emails provided in camera to this Court, which demonstrate multiple instances of Mr. Willich seeking and being provided legal advice and counsel from Mr. Naylor regarding Ms. Ball's investigation, without any objection by Mr. Willich to Mr. Naylor's participation. (See generally, K. Naylor Aff., Ex. A

and B)

In addition, in weighing Mr. Willich's credibility, it is notable that in his January 11, 2012 hearing testimony and four subsequent affidavits over the past almost two years, that he has only now mentioned that he believed that Mr. Naylor was not actually representing the City of Sun Valley in any capacity. Mr. Willich has spun wild and unsubstantiated conspiracy theories and allegations as to Mr. Naylor's actions, but it is only now, a full two years after Mr. Naylor was first retained by ICRMP to represent the City of Sun Valley and in connection with an attempt to undermine the attorney-client and work product privileges asserted by the City, that Mr. Willich conveniently alleges that he never actually authorized Mr. Naylor to legally represent the City of Sun Valley. For Mr. Willich to only now, years later, claim that he was unaware of the scope of Mr. Naylor's representation is absurd. As Mr. Naylor was clearly representing the City of Sun Valley, the attorney-client privilege applies to his communications made in furtherance of his representation, regardless of Mr. Willich's singular statements otherwise.

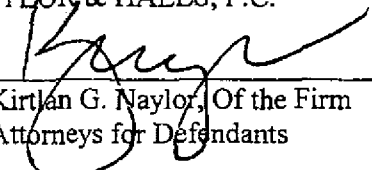
IV. CONCLUSION

For the reasons stated herein, Defendant requests that the Court deny Plaintiff's motion to enforce its subpoena served against Ms. Ball. In addition, in light of the lack of credible evidence or legal argument supporting Plaintiff's motion to enforce, and pursuant to IRCP 37(a)(4), Defendant requests an award of reasonable expenses in opposing Plaintiff's motion, including attorneys' fees.

DATED this 10th day of December, 2013.

NAYLOR & HALES, P.C.

By


Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

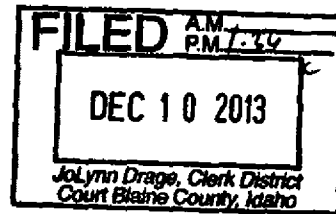
☐ U.S. Mail
☒ Hand Delivered
☐ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
jov@jonesandswartzlaw.com



Kirtlan G. Naylor

M:\CRMP\Hammer v. Sun Valley\Pleadings & Cases\UCV12-479 (Hammer WB 2012)\8406_23 Opp to Pl's Motion to Compel Ball Subpoena DRAFT.wpd

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com



Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF KIRTLAN G.
NAYLOR IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL**

STATE OF IDAHO)
) ss.
County of Ada)

I, KIRTLAN NAYLOR, having been duly sworn do hereby depose and say as follows:

1. I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF KIRTLAN G. NAYLOR IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL- 1.**

2. I am counsel of record for Defendant¹ The City of Sun Valley in the current action. I was retained on November 22, 2011, by the City of Sun Valley's insurance provider ICRMP to provide a defense to a lawsuit filed by Sharon Hammer on November 21, 2011.

3. Provided to this Court *in camera* and therefore not attached to this affidavit as **Exhibit A** are attorney-client communications between myself and the City of Sun Valley. These communications have not been otherwise disclosed and therefore retain their attorney-client privilege. Exhibit A contains true and accurate copies of the actual communications and I can attest for their authenticity. (See SV IN CAMERA 1-37)

4. Provided to this Court *in camera* and therefore not attached to this affidavit as **Exhibit B** are communications identified by the privilege log provided in conjunction with the response to Plaintiff's May 6, 2013 subpoena issued to Patti Ball. These communications have not been otherwise disclosed and therefore retain their work product and/or attorney-client privilege. Exhibit B contains true and accurate copies of the actual communications and I can attest for their authenticity. (See SV IN CAMERA 38-64)

5. Attached hereto as **Exhibit C** is a true and accurate copy of the Affidavit of Nils Ribi, dated August 28, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).

6. Attached hereto as **Exhibit D** is a true and accurate copy of the Affidavit of Adam King, dated August 28, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).

¹Defendants Nils Ribi and DeWayne Briscoe were dismissed by this Court's Order dated November 22, 2013.

7. Attached hereto as **Exhibit E** is a true and accurate copy of the Affidavit of Patricia Latham Ball, dated August 30, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).

8. Attached hereto as **Exhibit F** is a true and accurate copy of the Affidavit of Dewayne Briscoe, dated January 9, 2012, and previously filed in the *Hammer v. Ribi, et. al.*, matter (Blaine County, Case No. CV-2011-928).

9. Attached hereto as **Exhibit G** is a true and accurate copy of the Affidavit of Sharon R. Hammer Confirming the Final and Binding Dismissal of All Allegations of Wrongdoing Alleged by the City of Sun Valley Against Sharon R. Hammer, excluding exhibits, dated January 5, 2012, and previously filed in the *Hammer v. Ribi, et. al.*, matter (Blaine County, Case No. CV-2011-928).

10. Attached hereto as **Exhibit H** is a true and accurate copy of excerpts of the Supplemental Affidavit of Sharon R. Hammer In Reply to the City of Sun Valley's Objection to Second Motion for Temporary Restraining Order, ¶¶ 11-13 excluding exhibits, dated January 10, 2012, and previously filed in the *Hammer v. Ribi, et. al.*, matter (Blaine County, Case No. CV-2011-928).

11. Attached hereto as **Exhibit I** is a true and accurate copy of excerpts of the transcript testimony of Wayne Willich given at a January 11, 2012 hearing in the *Hammer v. Ribi, et. al.*, matter (Blaine County, Case No. CV-2011-928).

12. Attached hereto as **Exhibit J** is a true and accurate copy of the Affidavit of Wayne Willich Former Mayor of the City of Sun Valley, excluding exhibits, dated February 24,

**AFFIDAVIT OF KIRTLAN G. NAYLOR IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL- 3.**

2012, and previously filed in the *Hammer v. City of Sun Valley* Idaho Human Rights Complaint (No. E-0112-241; No. 38C-2012-00122).

13. Attached hereto as **Exhibit K** is a true and accurate copy of the Affidavit of Wayne Willich Former Mayor of the City of Sun Valley, excluding exhibits, dated November 5, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).

14. Attached hereto as **Exhibit L** is a true and accurate copy of the Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley, excluding exhibits, dated December 7, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).


15. Attached hereto as **Exhibit M** is a true and accurate copy of the "Memorandum Decision Granting Motion to Quash" of this Court filed on October 22, 2012, in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040), granting the City of Sun Valley's motion to quash the subpoena of Mr. Donoval served upon Ms. Ball.

16. Attached hereto as **Exhibit N** is a true and accurate copy of excerpts of the "Verified Complaint for Damages and Injunctive Relief Pursuant to the Idaho Protection of Public Employees Act," filed by Mr. Donoval as counsel for Plaintiff on November 21, 2011, as *Hammer v. Ribi, et. al*, Blaine County, Case No. CV-2011-928.

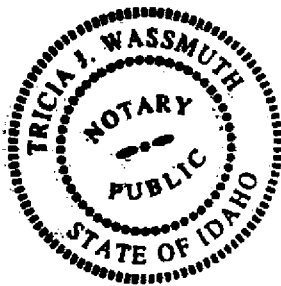
17. Attached hereto as **Exhibit O** is a true and accurate copy of the Affidavit of James R. Donoval, excluding exhibits, dated January 17, 2012, and previously filed in the *Ribi v. Donoval* matter (Blaine County, Case No. CV-2011-1040).


**AFFIDAVIT OF KIRTLAN G. NAYLOR IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL- 4.**

18. As counsel for Defendant City of Sun Valley, I produced the draft and final versions of Ms. Ball's investigative reports to counsel for Plaintiff on October 31, 2013, designating them confidential pursuant to the June 28, 2013 order of this Court.


Kirtlan G. Naylor

SUBSCRIBED AND SWORN TO before me this 10th day of December, 2013.




Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 8/4/17

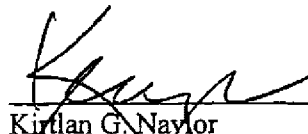
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December, 2013, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☒ Hand Delivered
☐ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

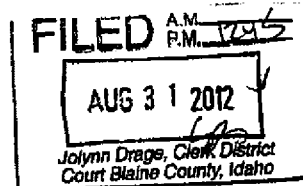
Attachments: Exs. A-O


Kirtlan G. Naylor

**AFFIDAVIT OF KIRTLAN G. NAYLOR IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL- 5.**

SEP 04 2012

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
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Attorneys for City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,

Plaintiff-Counter Defendant,

PATRICIA BROLIN-RIBI,

Plaintiff,

vs.

JAMES R. DONOVAL,

Defendant-Counter Plaintiff-Third
Party Plaintiff,

vs.

R. KEITH ROARK,

Third Party Defendant.

Case No. CV-2011-1040

**AFFIDAVIT OF NILS RIBI IN
SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO
QUASH SUBPOENA**

I, NILS RIBI, having been duly sworn do hereby depose and say as follows:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF NILS RIBI IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S
PETITION TO QUASH SUBPOENA - 1.**

2. I am currently a member of the City Council for the City of Sun Valley. I was first elected to the City Council in 2005 and have since been re-elected in 2009.

3. On November 10, 2011, the Treasurer of the City of Sun Valley, Michelle Frostenson, came to me and reported potential misuse of public funds and equipment by Sharon R. Hammer, City Administrator of the City of Sun Valley as well as other city employees, and asked if she could bring these matters to the attention of the City Council, because she had reported them to Mayor Willich on October 5, 2011, and nothing had been done about it since then.

4. After hearing Ms. Frostenson's allegations, I contacted then-City Council President Dewayne Briscoe and Councilman Bob Youngman, and we called a special executive session pursuant to Idaho Code § 50-706 in order to have Ms. Frostenson present her allegations before the entire City Council.

5. That special executive session was held on November 11, 2011, and Ms. Frostenson presented her allegations of potential misuse of public funds and equipment by Ms. Hammer in her role as City Administrator and by other City employees.

6. It is my understanding Mr. Willich and Adam King, City Attorney for the City of Sun Valley, spoke with Ms. Hammer about Ms. Frostenson's allegations after that executive session.

7. On November 11, 2011, shortly after the special executive session, I first learned that Ms. Hammer had some sort of allegations that I had harassed her.

8. On November 12, 2011, attorney James R. Donoval sent Mr. Willich a letter, copied to the City Council and two citizens recently elected, but not yet sworn in as City

**AFFIDAVIT OF NILS RIBI IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S
PETITION TO QUASH SUBPOENA - 2.**

Councilmembers. The letter threatened the City of Sun Valley with a lawsuit in connection with Ms. Hammer's allegations of alleged harassment and the City's potential disciplinary action against her.

9. Another special executive session was then held on November 14, 2011, regarding the allegations of Ms. Hammer's potential misuse of public funds and equipment, and to arrange for an independent investigation into those matters.

10. Following the November 14, 2011 special executive session, the City Council authorized a special investigation into the allegations against Ms. Hammer, in part because litigation had been threatened.

11. Mr. Donoval sent Mr. Willich a second letter, and copied the City Council and the Councilmembers-elect on November 15, 2011. This letter again indicated Mr. Donoval's intent to file a lawsuit on behalf of Ms. Hammer in connection with her allegations of harassment and the City's potential disciplinary action against her for the alleged misuse of public funds and equipment.

12. On November 16, 2011, Mr. Donoval sent Mr. Willich a third letter, copied to the City Council and Councilmembers-elect. This letter essentially reiterated the prior two letters and proposed a settlement offer to avoid litigation.

13. On November 21, 2011, Sharon R. Hammer filed a lawsuit against me, the City of Sun Valley and Adam King, as *Hammer v. Ribi*, Blaine County Case No. CV-2011-928.

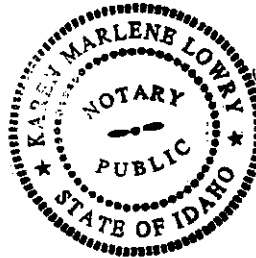
DATED this 28th day of August, 2012.



Nils Ribi

**AFFIDAVIT OF NILS RIBI IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S
PETITION TO QUASH SUBPOENA - 3.**

SUBSCRIBED AND SWORN TO before me this 28th day of August, 2012.



Karen Marlene Lowry
Notary Public for Idaho
Residing at: Belleveue
Commission Expires: 8.12.16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of August, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
PO Box 1499
Sun Valley, ID 83353
*Defendant-Counter Plaintiff-
Third Party Plaintiff*

☒ U.S. Mail

R. Keith Roark
The Roark Law Firm
409 N. Main St.
Hailey, ID 83333
*Attorneys for Nils Ribí and
Patricia Brolin-Ribí*

☒ U.S. Mail
☐ Hand Delivered
☐ Email: keith@roarklaw.com
☐ Fax Transmission: (208) 788-3918

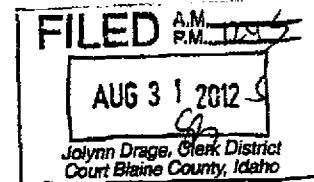
Kirtlan G. Naylor
Kirtlan G. Naylor

M:\General Representation\Clients N to Z\Sun Valley City\Motion (8617)\Pleadings\8617_06 Affidavit of Nils Ribí Draft2.wpd

**AFFIDAVIT OF NILS RIBI IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S
PETITION TO QUASH SUBPOENA - 4.**

SEP 04 2012

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com



Attorneys for City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,

Plaintiff-Counter Defendant,

PATRICIA BROLIN-RIBI,

Plaintiff,

vs.

JAMES R. DONOVAL,

Defendant-Counter Plaintiff-Third
Party Plaintiff,

vs.

R. KEITH ROARK,

Third Party Defendant.

Case No. CV-2011-1040

**AFFIDAVIT OF ADAM KING IN
SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO
QUASH SUBPOENA**

I, **ADAM KING**, having been duly sworn do hereby depose and say as follows:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN
VALLEY'S PETITION TO QUASH SUBPOENA - 1.**

2. I am currently the City Attorney for the City of Sun Valley. I was appointed as City Attorney by the City Council in 2008.

3. The Sun Valley City Council called a special executive session on November 10, 2011, pursuant to Idaho Code § 50-706. I did not know the purpose or the agenda of the meeting before it was actually held.

4. The special executive session was held on November 11, 2011. Michelle Frostenson, Treasurer for the City of Sun Valley, presented allegations to the Sun Valley City Council of potential misuse of public funds and equipment by Sharon R. Hammer, City Administrator for the City of Sun Valley, as well as other City employees.

5. After the executive session, then-Mayor Wayne Willich and I spoke with Ms. Hammer about Ms. Frostenson's allegations.

6. On November 12, 2011, attorney James R. Donoval sent Mr. Willich a letter, copied to the City Council and two citizens recently elected, but not yet sworn in as City Councilmembers. The letter threatened the City of Sun Valley with a lawsuit in connection with Ms. Hammer's allegations of harassment and potential disciplinary action against her for the alleged misuse of public funds and equipment. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit A.

7. The City Council called a second special executive session on November 14, 2011, regarding the allegations of Ms. Hammer's and other employees' potential misuse of public funds and equipment.

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 2.

8. Following the November 14, 2011 session, the City Council authorized a special investigation into the allegations against Ms. Hammer and, in part, because litigation had been threatened.

9. On November 15, 2011, Mr. Donoval sent Mr. Willich, copied to the City Council and the Councilmembers-elect, a second letter stating that Mr. Donoval intended to file a lawsuit in connection with Ms. Hammer's allegations of harassment and any potential disciplinary action against her for the alleged misuse of public funds and equipment. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit B.

10. On November 16, 2011, Mr. Donoval sent Mr. Willich, copied to the City Council and the Councilmembers-elect, a third letter that basically reiterated the prior two letters and offered to settle and avoid a lawsuit. In addition, the first page of the letter stated: "In Contemplation of Litigation." A redacted copy of this letter is attached hereto as Exhibit C.

11. On November 17, 2011, I contacted Patricia L. Ball, of Management Northwest, and another possible investigator, regarding the City's desire to possibly retain her services for a fact-finding investigation regarding various allegations that could be the subject of litigation.

12. On November 18, 2011, I, along with Mr. Willich and Mr. Briscoe interviewed Ms. Ball and another investigator.

13. Ms. Hammer was placed on paid administrative leave the same day, November 18, 2011.

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 3.

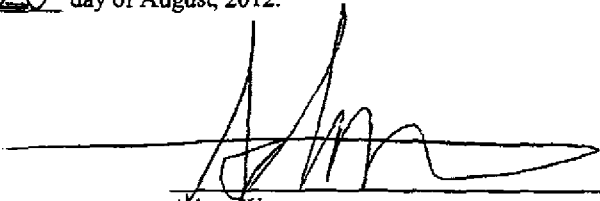
14. On November 21, 2011, the City of Sun Valley retained Ms. Ball for the purpose of conducting an investigation into the alleged violations of City Policy. At that time, I was to be Ms. Ball's legal contact. Ms. Ball and Mr. Willich signed a written Engagement Letter for City of Sun Valley Investigation on November 23, 2011.

15. Ms. Hammer filed a complaint in Idaho's Fifth District Court, Blaine County, against me, the City of Sun Valley and Nils Ribi on November 21, 2011, as *Hammer v. Ribi et al.*, Blaine County Case No. CV-2011-928. Because I was a named defendant in the lawsuit, it was determined that I should not be Ms. Ball's legal contact, to avoid any appearance of a conflict.

17. I forwarded the complaint to the City's insurance carrier in accordance with our policy for coverage. Kirtlan G. Naylor, Naylor & Hales, P.C. was assigned to provide legal defense for the City of Sun Valley on November 22, 2011.

18. Sun Valley officials decided on or about November 28, 2011, that Mr. Naylor would be Ms. Ball's primary legal and process contact and all coordination was to go through him. Ms. Ball was to report substantive issues directly to Messrs. Briscoe, Willich and myself.

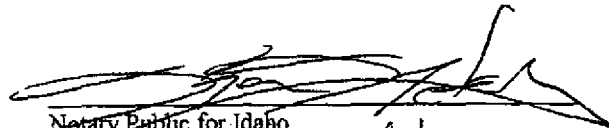
DATED this 28th day of August, 2012.


Adam King

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S PETITION TO QUASH SUBPOENA - 4.

SUBSCRIBED AND SWORN TO before me this 28th day of August, 2012.




Notary Public for Idaho
Residing at: Ketchum Idaho.
Commission Expires 9-26-14.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
PO Box 1499
Sun Valley, ID 83353
*Defendant-Counter Plaintiff-
Third Party Plaintiff*

☒ U.S. Mail

R. Keith Roark
The Roark Law Firm
409 N. Main St.
Hailey, ID 83333
*Attorneys for Nils Ribi and
Patricia Brolin-Ribi*

☒ U.S. Mail
☐ Hand Delivered
☐ Email: keith@roarklaw.com
☐ Fax Transmission: (208) 788-3918


Kirtlan G. Naylor

AFFIDAVIT OF ADAM KING IN SUPPORT OF NON-PARTY CITY OF SUN
VALLEY'S PETITION TO QUASH SUBPOENA - 5.

JAMES R. DONOVAL

Attorney

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com

STRICTLY CONFIDENTIAL
Not For Public Distribution
In Contemplation Of Litigation

November 12, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Sun Valley City Administrator

Mayor Willich:

Be advised that I represent Ms. Hammer related to the oral allegations of impropriety forwarded to Ms. Hammer late in the day on Friday, November 11, 2011, by yourself and Sun Valley City Attorney Adam King. These allegations had been discussed by yourself and Mr. King with Sun Valley City Council members Nils Ribi, Bob Youngman and DeWayne Briscoe during a Sun Valley City Council Executive Session earlier in the day. Pursuant to both Idaho State Statutes and the City Of Sun Valley Policies And Procedures, the Sun Valley City Council has no independent authority to take disciplinary action or to terminate Ms. Hammer. Only the Mayor Of Sun Valley can authorize the termination or disciplinary action of a City Of Sun Valley employee, and in particular the Sun Valley City Administrator (namely, Ms. Hammer). Thus the termination payment offered to Ms. Hammer as described by yourself and Mr. King as being made on behalf of Mr. Ribi, Mr. Youngman and Mr. Briscoe, is unauthorized under Idaho law and the City Of Sun Valley policies, and is therefore a nullity. Therefore, no response to Mr. Ribi's, Mr. Youngman's and Mr. Briscoe's request will be forthcoming.

Both you and Mr. King described allegations that were discussed at the Executive Session on Friday. However, no written corroboration or written detail of such allegations were provided to Ms. Hammer during her discussions with you and Mr. King. Although you hinted at other allegations at that time, the two main allegations of impropriety described to Ms. Hammer was that Ms. Hammer somehow violated City Of Sun Valley vacation pay and use of City Of Sun Valley automobile policies. Ms. Hammer un-categorically denies any such allegations.


Ms. Hammer Was Granted Flexible Personal Time And Was Authorized To Use A City Of Sun Valley Vehicle

Although Ms. Hammer refuses to respond in detail to any allegations until such are detailed in a formal written charging document, it should be noted that Section 10 of the existing City Administrator Employment Agreement between the City Of Sun Valley and Ms. Hammer provides that "the Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate." Ms. Hammer discussed a flexible work schedule with you in which you agreed that hours worked outside of a normal 8 a.m. to 5 p.m. workday could be taken off without the use of vacation time. Additionally, Ms. Hammer requested and you approved her use of the City Of Sun Valley automobile at issue. Should the City Of Sun Valley, and in particular Mayor-Elect Briscoe, wish to change the current policies you implemented related to both flexible time off and the use of the City Of Sun Valley owned automobile, Ms. Hammer will comply with those directives. However, for the City Of Sun Valley to retroactively modify either policy as a basis for disciplinary action or for termination of Ms. Hammer has no support in law, logic or basic fairness, and will be challenged and litigated to the fullest extent, if required.

Mr. Ribí Is Seeking Retribution For Ms. Hammer's Reporting Of His Own Abusive Behavior And Harassment

On multiple occasions, Ms. Hammer has been verbally and mentally abused by Sun Valley Council Member Nils Ribí, and on at least one occasion was physically threatened by Mr. Ribí. These incidents were witnessed by others and reported to you, Mr. King and Sun Valley Police Chief Cam Daggett. It is my understanding that you have also notified Mr. Ribí of his inappropriate conduct towards Ms. Hammer. Ms. Hammer has required medical and personal counseling due to the harassment inflicted by Mr. Ribí, and Mr. Ribí's actions and the results of his actions have been documented.

To date, Ms. Hammer has refrained from prosecuting Mr. Ribí and the City Of Sun Valley for harassment, as would be her right pursuant to the clearly established Sun Valley policies and procedures on harassment of employees. However, it is now clear to Ms. Hammer that due to the impending change of administration, that by seeking her dismissal that Mr. Ribí is seeking retribution against Ms. Hammer for Ms. Hammer's previous reporting of Mr. Ribí's inappropriate action against Ms. Hammer to yourself and other Sun Valley officials. Thus, should the City Of Sun Valley, and in particular Mr. Ribí, continue to make allegations of impropriety against Ms. Hammer, she will prosecute Mr. Ribí and the City Of Sun Valley for harassment, for defamation of character and for retaliatory discharge to the full extent of the law. In doing so, Ms. Hammer will seek a full investigation through discovery and disclosure of facts of Mr. Ribí's own history of misconduct



[REDACTED]

[REDACTED]

Sun Valley City Attorney Adam King Should Be Barred From Further Participation In The Matter

We are seeking that Sun Valley City Attorney Adam King be barred from any further involvement in any matters related to Ms. Hammer. Mr. King has been notified by both you and Ms. Hammer of multiple issues related to the personnel problems associated with Mr. Ribí. And,

[REDACTED]

Should this matter go to trial, Mr. King will certainly be a witness associated with his statements and knowledge [REDACTED]

The City Of Sun Valley Has A Well Established Policy On Employee Discipline

The City Of Sun Valley has established progressive discipline policies related to all employees, which includes Ms. Hammer, and has established policies requiring that employees against whom disciplinary actions are taken are to be provided with the right to due process to defend any and all allegations of misconduct.

Ms. Hammer has never been notified of any prior acts of misconduct, and she has been given exceptional reviews by yourself since she became the Sun Valley City Administrator in 2008. Ms. Hammer has been credentialed by the International City/County Manager's Association during her tenure with the City Of Sun Valley, verifying her dedication to the highest standards of ethical management, and has received the highest accolades from the Government Finance Officer's Association for both the City Of Sun Valley 2011 Budget and the City Of Sun Valley 2010 Audit, indicating Ms. Hammer's conformance with the highest standards of financial reporting, in direct contradiction to the claims asserted against her as to her purported financial mismanagement. Considering Ms. Hammer's exemplary performance and the failure of the City Of Sun Valley to bring any previous allegations of mismanagement against Ms. Hammer, there is certainly no basis for a dismissal of Ms. Hammer for cause based on purported violations of policies which had been approved by yourself.

As to the procedures being followed by the Sun Valley City Council related to Ms. Hammer's purported misconduct, Ms. Hammer is certainly entitled to 1) formal written notice of the charges being assessed against her, 2) disclosure of any and all documents which support the claims being made against her, and 3) a formal hearing on the charges being assessed against her at which time she is entitled to legal representation and the right to confront her accusers and bring forward witnesses and evidence in her defense. On information and belief, Former Sun Valley City Administrator Virginia Egger was provided with the same full due process rights when Mr. Ribí also brought misconduct allegations against her, and Ms. Hammer should be entitled to no less of due process protections.

Any Disciplinary Actions Against Ms. Hammer, Prior To A Full And Complete Confidential Investigation, The Confidential Filing Of Formal Charges And Confidential Formal Proceedings Will Be Considered A Purposeful Attack Upon Ms. Hammer's Otherwise Unblemished Professional Character

Please be placed on notice that any disciplinary actions taken by the City Of Sun Valley, including placing Ms. Hammer on administrative leave before Ms. Hammer is provided with written charges and until a full and complete due process procedure is followed, all of which must be done in total confidence, will be considered to be an action on behalf of the City Of Sun Valley (and in particular Mr. Ribí), to damage Ms. Hammer's otherwise stellar and unblemished professional character, and will result in Ms. Hammer seeking vindication of such. As has been described, Ms. Hammer has a long history of being recognized for her professional performance and ethical conduct by national professional organizations such as the International City/County Manager's Association and the Government Finance Officer's Association. Based on those accolades, Ms. Hammer should be given the benefit of the doubt as to her integrity and ethics.

As you are well aware, should you place Ms. Hammer on administrative leave, such action will be published in the Idaho Mountain Express. The effect of such public notice of the assertion that Ms. Hammer has done something improper will never be able to be adequately countered in the future even if such charges are later dismissed. There can be no doubt that Mr. Ribí's intentions of convincing you to put Ms. Hammer on administrative leave is a purposeful attempt on the part of Mr. Ribí to publicly besmirch Ms. Hammer's otherwise pristine reputation.

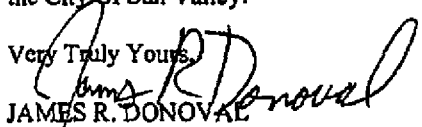
I implore you to avoid the inclination to place Ms. Hammer on administrative leave. As you are aware, Ms. Hammer has no authority to sign checks or for payroll – as that rests solely with you and Sun Valley City Clerk Kelly Eck (based upon presentation of request for payment of such to you by Sun Valley Finance Manager/Treasurer Michelle Frostenson). Thus, any assertion that Ms. Hammer could somehow act inappropriately with Sun Valley funds is impossible. And as you are also aware, you are personally in Sun Valley City Hall almost every day and will continue to have direct supervision over almost all activities of Ms. Hammer during an investigatory period. The weighing of the costs associated with Ms. Hammer's permanent loss of professional credibility should you place her on administrative leave, and the costs of the inevitable litigation that will follow, are clearly outweighed by your personal ability to control and approve all financial transactions of Sun Valley during an investigatory period.

Request For A Special Sun Valley City Council Executive Session

We are seeking that you call a Special Meeting and Executive Session of the Sun Valley City Council for Wednesday, November 16, 2011, and that you allow myself, Ms. Hammer, and recently elected Sun Valley City Council members Franz Suhadolnik and Michelle Griffith to attend such Executive Session. Based on the above described issues, we request that Mr. King be barred from attending such Executive Session (although we have no objection to another attorney being present to represent yourself and the City Of Sun Valley). By the end of the day Tuesday, November 15, 2011, we demand that we be provided with formal written charges of any wrongdoing that Ms. Hammer is being charged with and that we be provided with any and all documents associated with the allegations against Ms. Hammer for use in such Executive Session. At the November 16, 2011 Executive Session we expect to fully discuss any assertions made against Ms. Hammer and the allegations being asserted herein against Mr. Ribí, and we will be expecting that any and all assertions of wrongdoing against Ms. Hammer be dismissed at that time, with prejudice. Should the City Of Sun Valley choose to either not hold the Executive Session described above or to fully dismiss all allegations of mis-management or other wrong doing against Ms. Hammer, with prejudice, by Friday, November 18, 2011 – on Monday, November 21, 2011, we will file the aforementioned harassment claims against Mr. Ribí and the City Of Sun Valley in the Blaine County Court and let the litigation process, and the inevitable negative publicity to the City Of Sun Valley that will ensue, take its course. Any further disciplinary action taken by the City Of Sun Valley against Ms. Hammer thereafter will result in the addition of damage to reputation and retaliatory discharge claims against Mr. Ribí and the City Of Sun Valley.

Obviously, this is not the stable transfer of administrations and the retaining of the quality professional employees that both you and Mayor-Elect Briscoe have publicly promised, nor can Mayor-Elect Briscoe possibly be satisfied that his new administration will commence with such acrimony. However, should Mr. Ribí's vindictive intentions against Ms. Hammer be the controlling focus of the Sun Valley City Council, inevitably the next few months, or years, will be dominated by attention being paid to Mr. Ribí's emotional illness and continued abuse of City Of Sun Valley employees rather than all of the high quality improvements that Ms. Hammer and the other highly skilled City Of Sun Valley employees have brought and will continue to bring to the City Of Sun Valley.

Very Truly Yours,


JAMES R. DONOVAN
Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
N. Ribí
R. Youngman
F. Suhadolnik
M. Griffith

JAMES R. DONOVAL

Attorney

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November 15, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Allegations Of Misconduct
Continued Demand For Total Confidentiality

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the generic oral allegations of misconduct being made by Nils Ribi against Ms. Hammer and the allegations of on-going and extensive harassment which Ms. Hammer has made against Mr. Ribi.

It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested regarding the misconduct allegations being made against Ms. Hammer as well as the extensive harassment allegations Ms. Hammer has made against Mr. Ribi. However, instead, Ms. Hammer was told by yourself that the City Of Sun Valley will be appointing an independent party to conduct an investigation of all misconduct. I applaud your decision to investigate all allegations being made by Mr. Ribi against Ms. Hammer. We request and expect that the independent party will also perform a complete investigation into the serious allegations of harassment that Ms. Hammer has made against Mr. Ribi as part of the process, as well as Mr. Ribi's continued violation of Section 3.2 of Sun Valley Policies And Procedures related to Mr. Ribi's improper directives to Sun Valley employees and Mr. Ribi's intrusion into the day to day operations of the City Of Sun Valley. Ms. Hammer will cooperate with the investigation, will fully disclose any facts and documents being requested by the investigator and will discuss with the investigator and yourself any issues related to the investigation.

I want to reiterate our demand that any and all matters related to the investigation, any charges being made against Ms. Hammer and any meetings or hearings with or before yourself and the Sun Valley City Council remain highly confidential. As you have been made aware, we believe that Mr. Ribi's intent

is to somehow publicly besmirch Ms. Hammer's reputation in retaliation for Ms. Hammer having disclosed and filed multiple and on-going harassment assertions against Mr. Ribí, and that the investigation against Ms. Hammer is nothing more than a sham "witch hunt" against Ms. Hammer by Mr. Ribí. I want to reiterate in the strongest terms possible that should any public disclosure be made of any allegations against Ms. Hammer of any sort, any public disclosure be made of the investigation being performed or any public disclosure be made of the proceedings that may be brought against Ms. Hammer, Ms. Hammer will consider Mr. Ribí and the City Of Sun Valley to have violated Ms. Hammer's due process rights and will prosecute Mr. Ribí and the City Of Sun Valley to the maximum extent allowed by law for both retaliatory discharge for bringing harassment claims against Mr. Ribí and for damage to Ms. Hammer's reputation.

In addition, I want to applaud your decision not to place Ms. Hammer on administrative leave until such time as the investigation and any formal proceedings against Ms. Hammer have been completed. As previously noted, you and City Clerk Kelly Eck sign all checks and for all payments out of City Of Sun Valley funds and you are personally in Sun Valley City Hall every day to monitor Ms. Hammer (in the office next door to yours) and the on-going activities of the City Of Sun Valley, thus there is no chance for Ms. Hammer to perform any acts of misconduct without your knowledge. As I have previously explained, the mere act of placing Ms. Hammer on administrative leave, for any reason, will of itself be an act of defaming Ms. Hammer for which there will never be satisfactory repair. It is evident that Mr. Ribí's intent is to damage Ms. Hammer's reputation in any way possible in retaliation for Ms. Hammer's claims for harassment against Mr. Ribí. I want to reiterate that we would consider any act of preemptive discipline such as putting Ms. Hammer on any form of leave, to also be an act of retribution for Ms. Hammer's harassment claims against Mr. Ribí and will also prosecute Mr. Ribí and the City Of Sun Valley for such action for retaliatory discharge and for damages to the fullest extent of the law.

Finally, thus far Mr. Ribí, and in some ways the City Of Sun Valley, has handled this entire matter in an extremely unprofessional manner, and in some ways already in violation of Ms. Hammer's due process rights. Last Friday, you and City Attorney Adam King were directed by Mr. Ribí and other Sun Valley City Council members to extend an offer of resignation to Ms. Hammer without any formal written charges having been provided to her and without any written evidence being produced to her. I would ask that should Ms. Hammer be accused of any misconduct violations, that Mr. Ribí and the City Of Sun Valley "cite its source" by providing Ms. Hammer with the specific Idaho statute, Sun Valley Municipal Code Section, Sun Valley Policy And Procedure section or other specific act or document which supports the allegations made against Ms. Hammer. Considering that we have clearly described Mr. Ribí's acts thus far as nothing more than a "witch hunt" in retaliation for the harassment claims made by Ms. Hammer against Mr. Ribí, and Mr. Ribí's long history of unsupported claims that he somehow has expertise in law and other municipal related matters, we hope that the City Of Sun Valley stands up for the highest standards of due process and ensures that Mr. Ribí's allegations of any type against Ms. Hammer are supported by actual established written legal precedent.

Very Truly Yours,

JAMES R. DONOVAL

Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
F. Suhadolnik
M. Griffith
N. Ribí

JAMES R. DONOVAL

Attorney

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November 16, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – City Of Sun Valley - Nils Ribí: Harassment Settlement

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the issues detailed in the letter related to Mr. Ribí's on-going harassment of Ms. Hammer. As I stated, Ms. Hammer had chosen not to previously proceed against Mr. Ribí for violation of the City Of Sun Valley harassment policies because of your personal promise that you had discussed the matter with Mr. Ribí and because of your personal promise that the City Of Sun Valley would take actions to protect Ms. Hammer from any further inappropriate behavior on the part of Mr. Ribí. It is apparent that due to the recent change of administration, Mr. Ribí now considers himself to be free to continue his prior history of abuse and harassment of Ms. Hammer.

It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested to confront Mr. Ribí regarding his harassment of Ms. Hammer, nor is there any suggestion that the City Of Sun Valley intends to take action against Mr. Ribí or enter into any resolution to the allegations made against Mr. Ribí by Ms. Hammer.

In the previous letter, I clearly described that if all matters related to Mr. Ribí's harassment of Ms. Hammer were not fully resolved by Friday, November 18, 2011, that I would be filing a harassment law suit against Mr. Ribí and the City Of Sun Valley on November 21, 2011. In addition, as was made very clear in the letter, the failure to call the Special Meeting and

Executive Session requested alone would result in the filing of the aforementioned harassment law suit against Mr. Ribi and the City Of Sun Valley.

I had previously urged to you to investigate the allegations against Mr. Ribi regarding Mr. Ribi's violations of the Section 3.2, Section 7.4 and Section 7.5 of the Sun Valley Policies And Procedures (related to Mr. Ribi's improper directives towards Ms. Hammer and Sun Valley employees, Mr. Ribi's seeking and obtaining of confidential Sun Valley and Sun Valley employee information and Mr. Ribi's harassment of Ms. Hammer). You and the Sun Valley City Council should take note that Mr. Ribi was the only member of the Sun Valley City Council voting against your request for an independent investigation at the Monday, November 14, 2011 Sun Valley City Council meeting, evidencing Mr. Ribi's intent to avoid having to face these serious allegations regarding his own conduct. Now, since that meeting, we have been informed that Mr. Ribi continues to contact Sun Valley employees seeking confidential information regarding matters related to Ms. Hammer, in direct violation of both Section 3.2 and Section 7.4 of the Sun Valley Policies And Procedures, and even though you directed that an independent investigation of all matters is going to be performed.

We applaud your conducting of an internal investigation. However, due to the serious nature of the harassment claims being made by Ms. Hammer, and to disclose Mr. Ribi's abhorrent conduct and seek to protect not only Ms. Hammer but Sun Valley employees and the general public from Mr. Ribi, I still fully intend to file the mentioned harassment suit on behalf of Ms. Hammer on Monday, November 21, 2011 as previously discussed. As you are aware, that law suit will be a completely public proceeding and all allegations against Mr. Ribi and the City Of Sun Valley and any and all actions and findings related to Mr. Ribi and the City Of Sun Valley after the filing of such law suit will be public record. Please be advised that on behalf of Ms. Hammer, that in order to avoid such action, we are offering the following terms of settlement related to all allegations made by Ms. Hammer against Mr. Ribi and the City Of Sun Valley in order to prevent the filing of the aforementioned harassment law suit:

- a) Mr. Ribi will resign from the Sun Valley City Council for "personal reasons" effective the day after Mayor-Elect Briscoe is sworn in as Mayor Of Sun Valley. This will allow Mayor-Elect Briscoe to name Mr. Ribi's replacement;
- b) The City Of Sun Valley will pay Ms. Hammer the sum of one hundred thousand dollars (\$100,000.00) in settlement of all harassment claims Ms. Hammer may have against Mr. Ribi and/or the City Of Sun Valley;
- c) Mr. Ribi will agree to never contact Ms. Hammer in any form. Mr. Ribi will also agree that should he ever contact Ms. Hammer again that Ms. Hammer will be entitled to further proceed against him personally for liquidated and punitive damages in the sum of an additional one hundred thousand dollars (\$100,000.00) for further harassment and breach of his no-contact agreement.

We would still be willing to sit with the Sun Valley City Council in Executive Session, including with recently elected Sun Valley City Council members Michelle Griffith and Franz Suhadolnik and discuss the matter. However, should I not be provided written confirmation that

all terms described herein have been accepted by the City Of Sun Valley and Mr. Ribí by 12:00 p.m. (noon) Friday November 18, 2011, or that some other amicable settlement has been accepted by Ms. Hammer or is being negotiated - on Monday November 21, 2011, on behalf of Ms. Hammer I will file in the Blaine County Court the harassment and intentional infliction of emotional distress action previously described against Mr. Ribí and the City Of Sun Valley. The law suit will detail all acts of Mr. Ribí in harassing Ms. Hammer, [REDACTED]

[REDACTED] I have attached a courtesy draft copy of the Verified Complaint that we propose will be filed on Monday, November 21, 2011, so that you may understand the serious nature of the claims being made by Ms. Hammer against Mr. Ribí and the City Of Sun Valley.

[REDACTED] And, there is no question that had any other employee of the City Of Sun Valley performed the various acts of verbal, mental and threatened physical abuse that Mr. Ribí has done over the course of at least the last three (3) years that such employee would have been severely disciplined or terminated from their employment position. Mr. Ribí should be treated no differently. As has been evidenced by recent allegations regarding Penn State University, public officials and employees have an unquestionable duty to make the public aware of any allegations related to a public official's acts endangering the safety of individuals and to seek immediate removal of such officials and report such acts to appropriate authorities. [REDACTED]

[REDACTED] Should Mr. Ribí not resign as suggested, and subsequently perform any further acts of impropriety or injury to City Of Sun Valley employees, and in particular to Ms. Hammer, [REDACTED]

[REDACTED] it is certainly now the City Of Sun Valley and the individual members of the Sun Valley City Council who will be held responsible.

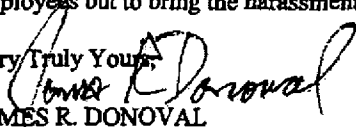
The Sun Valley City Council has no authority to force Mr. Ribí's resignation. However, Idaho State Statute 19-4101 provides for the removal of a public officer, after trial by the local county prosecutor, for actions of willful misconduct. Should Mr. Ribí refuse to resign, in order to protect City Of Sun Valley employees, in particular Ms. Hammer, and the public in general, I, and Ms. Hammer, believe that you, and the remaining Sun Valley City Council members are obligated to forward to Blaine County Prosecutor Jim J. Thomas a request to seek removal of Mr. Ribí from his position as a Sun Valley City Council member for acts of willful misconduct related to the harassment of Ms. Hammer in violation of Section 7.5 of the Sun Valley Policies And Procedures. In addition, as is detailed in the Verified Complaint, Mr. Ribí's multiple violations of both Section 3.2 (related to authority to direct Sun Valley employees) and Section 7.4 (related to disclosure of confidential Sun Valley and Sun Valley employee information) of the Sun Valley Policies And Procedures should also subject Mr. Ribí to removal from office pursuant to Idaho Statute 19-4101 for additional and separate willful misconduct by Mr. Ribí.

If the City Of Sun Valley and the individual members of the Sun Valley City Council do not either obtain Mr. Ribí's resignation or seek prosecution of Mr. Ribí for willful misconduct, please be on notice that the City Of Sun Valley and the individual members of the Sun Valley City Council will bear responsibility for any future actions of impropriety or misconduct on the part of Mr. Ribí and any physical or emotional injury Mr. Ribí subsequently causes.

Please note that upon the filing of the harassment law suit against the City Of Sun Valley and Mr. Ribí, the Verified Complaint and this letter will be disclosed to the public, including that both will be provided to the Idaho Mountain Express, the Times-News and the Idaho Statesman for publication, in an effort for the public to take notice of Mr. Ribí's potential danger to Ms. Hammer, City Of Sun Valley employees, and the general public, and to disclose the failure of the City Of Sun Valley to take any actions to protect such individuals from further potential harassment, threats and physical harm from Mr. Ribí.

On a personal note, Ms. Hammer wishes to thank you for all of your efforts in seeking to ensure that Ms. Hammer has been protected from Mr. Ribí and his insults, abuses, misconduct and attacks during your term as Mayor. As has been stated, Ms. Hammer has refrained from seeking the legal recourse she is certainly entitled to against Mr. Ribí based in large part on your personal promises and integrity. However, with the impending change of administration and that Mr. Ribí has now made clear that somehow he is "in charge" and "things will be done differently", Ms. Hammer has no other recourse to protect herself and other Sun Valley employees but to bring the harassment action, unless Mr. Ribí resigns.

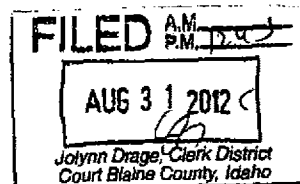
Very Truly Yours,


JAMES R. DONOVAL
Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
F. Suhadolnik
M. Griffith
N. Ribí

SEP 04 2012

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Attorneys for City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NLS RIBI,

Plaintiff-Counter Defendant,

PATRICIA BROLIN-RIBI,

Plaintiff,

vs.

JAMES R. DONOVAL,

Defendant-Counter Plaintiff-Third
Party Plaintiff,

vs.

R. KEITH ROARK,

Third Party Defendant.

Case No. CV-2011-1040

**AFFIDAVIT OF PATRICIA LATHAM
BALL IN SUPPORT OF NON-PARTY
CITY OF SUN VALLEY'S MOTION
TO QUASH SUBPOENA**

I, Patricia Latham Ball, having been duly sworn do hereby depose and say as follows:

1. I am over eighteen years of age and I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 1.**

2. I am an attorney licensed in the State of Idaho, Washington and California and currently own and operate Management Northwest, an employment and human resources law practice. I also provide investigations relating to alleged violations of law and policy, suspected theft, misappropriation, harassment and discrimination. I founded Management Northwest in 2002.

3. I was contacted by Sun Valley City Attorney Adam King on November 17, 2011, regarding the City's desire to possibly retain my services for a fact-finding investigation regarding various allegations that could be the subject of litigation.

4. I had an interview with Mr. King, then-City Council President Dewayne Briscoe and then-Mayor of Sun Valley, Wayne Willich, on November 21, 2011.

5. On November 21, 2011, I was retained by the City of Sun Valley for the purpose of conducting an investigation into alleged violations of City policy. On November 23, 2011, I signed, as did Mr. Willich on behalf of the City of Sun Valley, an "Engagement Letter for City of Sun Valley Investigation."

6. My role was to act solely as a fact-finding investigator regarding whether there were violations of Sun Valley City policy regarding specific allegations as provided to me from Mr. Willich and the City Council. I was aware of the threatened litigation and the complaint that was filed.

7. My initial attorney contact regarding the investigation was with Mr. King, as the City Attorney for the City of Sun Valley.

8. I arrived in Sun Valley to begin conducting interviews on November 28, 2011. Sun Valley officials informed me that Kirtlan G. Naylor, Naylor & Hales, P.C., would be my primary

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 2.**

legal and process contact, and all coordination was to go through him. I was to report substantive issues directly to Messrs. Briscoe, King, Willich and Naylor .

9. Throughout the course of my investigation, I sought legal advice and guidance for the investigation through Mr. Naylor, with full approval and consent of the City of Sun Valley.

10. On November 30, 2011, Mr. Naylor informed me, on behalf of the City, that the scope of my investigation was to be expanded into additional and newly brought allegations.

11. I conducted my investigations into the various allegations over the following weeks. This included approximately four (4) days of interviewing witnesses, additional telephonic interviews, several days of evidence review, analysis, communications and drafting the report.

12. I completed the factual basis of my report on December 9, 2011, and thereafter presented a draft version of the report for review to Mr. Willich, the City Council, Mr. King and Mr. Naylor on December 12, 2011.

13. I finalized my report and analysis on December 20, 2011.

14. My report consisted of an application of the discovered facts to potential violations of city policy.

15. On or about July 22, 2012, I was served a "SUBPOENA FOR PRODUCTION OF DOCUMENTS" from a process server for James R. Donoval, *pro se* litigant in the above captioned case. A true and correct copy of the Subpoena is attached hereto as Exhibit A.

16. The Subpoena commands that I produce numerous items identified in an attachment to the Subpoena. The gist of the commands is that I produce any and all documentation related to my investigation.

AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF SUN VALLEY'S MOTION TO QUASH SUBPOENA - 3.

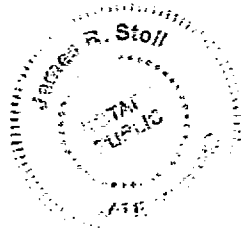
17. Because the Subpoena sought the investigative report and all related materials that were prepared on behalf of Sun Valley in anticipation of litigation, and also requested privileged communications, I informed the City of the Subpoena.

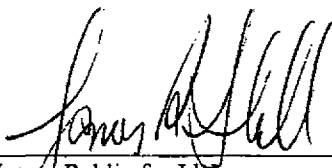
DATED this 30th day of August, 2012.



Patricia Latham Ball

SUBSCRIBED AND SWORN TO before me this ____ day of August, 2012.





Notary Public for Idaho
Residing at: Boise
Commission Expires: 2/15/14

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 4.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of August, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
PO Box 1499
Sun Valley, ID 83353
*Defendant-Counter Plaintiff-
Third Party Plaintiff*

☒ U.S. Mail

R. Keith Roark
The Roark Law Firm
409 N. Main St.
Hailey, ID 83333
*Attorneys for Nils Ribí and
Patricia Brolin-Ribí*

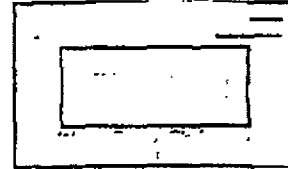
☒ U.S. Mail
☐ Hand Delivered
☐ Email: keith@roarklaw.com
☐ Fax Transmission: (208) 788-3918



Kirtan G. Naylor

**AFFIDAVIT OF PATRICIA LATHAM BALL IN SUPPORT OF NON-PARTY CITY OF
SUN VALLEY'S MOTION TO QUASH SUBPOENA - 5.**

James R. Donoval, Pro Se
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

NILS RIBI,
Plaintiff-CounterDefendant,

PATRICIA BROLIN-RIBI,
Plaintiff,

v.

JAMES R. DONOVAL
Defendant-CounterPlaintiff-Third Party
Plaintiff,

v.

R. KEITH ROARK,
Third Party Defendant.

ISSUED
DATE

7/13/12

No. CV-2011-1040

SUBPOENA FOR PRODUCTION OF DOCUMENTS

TO: Patti Ball, c/o Management Northwest, 916 Wyndemere Dr., Boise, ID 83702

THE STATE OF IDAHO TO: PATTI BALL

YOU ARE COMMANDED: To produce the following documents or objects, including electronically stored information, at the place, date and time, specified below:

See Attached "Documents To Be Produced"

PLACE, DATE AND TIME: James R. Donoval, Attorney, c/o P.O. Box 1499, Sun Valley Idaho, 83353, by _____.

You are further notified that if you fail to produce the documents as specified above you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

Dated this 13 day of July, 2012.

By order of Court.

Clerk

EXHIBIT A - Page 1

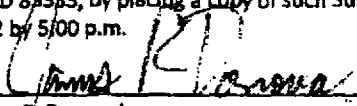
EXHIBIT E

Documents To Be Produced

- 1) The retainer agreement or contract between yourself or any entities controlled by you or for which you are employed by which you were hired by the City Of Sun Valley, Mayor Wayne Willich, Mayor DeWayne Briscoe, the Idaho Counties Risk Management Program ("ICRMP"), Kirtlan Naylor or Naylor & Hales, to perform an investigation of allegations of any type made against either Sharon R. Hammer or Nils Ribi commencing in November of 2011.
- 2) Any and all invoices submitted to the City Of Sun Valley, Mayor Wayne Willich, Mayor DeWayne Briscoe, the Idaho Counties Risk Management Program, Kirtlan Naylor or Naylor & Hales Idaho for any and all services rendered in regards to the investigation you were hired by any of these parties to perform commencing in November of 2011.
- 3) Copies of any and all audio tapes of any and all interviews conducted by yourself in regards to the investigation you performed described in paragraphs 1 and 2 above related to any matters or conversations associated with any and all allegations made against either Sharon R. Hammer or Nils Ribi.
- 4) Copies of any and all documents received by yourself during the investigations described in paragraphs 1 and 2 including a description from who such documents were obtained.
- 5) Copies of any and all correspondences or communications, including emails, between yourself and any City Of Sun Valley employee, Mayor or City Council Member commencing in November of 2011 through current.
- 6) Copies of any and all correspondences or communications, including emails, between yourself and either attorney Adam King, attorney Brad Miller, or attorney Kirtlan Naylor, commencing in November of 2011 through current, related to the investigation you performed described in paragraphs 1 and 2. Should you claim that an attorney client privilege exists between yourself and either attorney King, attorney Miller or attorney Naylor, provide any written documents evidencing such attorney client relationship. Should you claim any correspondence or communication as being covered by an attorney client privilege, provide a log of each communication or correspondence, who the document was received from or sent to, the date of the correspondence or document, the general description of the nature of the subject matter of the document or correspondence, and the statute or rule under which the privilege is claimed.
- 7) Copies of any and all reports produced by yourself in relation to the investigation described in paragraph 1 and 2 above, whether in draft form or in final form, including evidence of the date of the production of such report and to whom such report was provided.

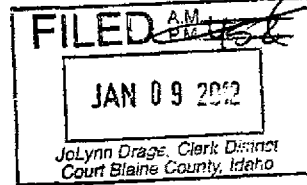
PROOF OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Subpoena was served upon R. Keith Roark, 409 North Main Street, Hailey, ID 83333, by placing a copy of such Subpoena in the U.S. Mail, proper postage prepaid on March 27, 2012 by 5:00 p.m.


James R. Donoval

Kirtlan G. Naylor [JSB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com

Attorneys for Defendants City of Sun Valley,
Nils Ribi, Adam King and Robert Youngman



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation;
ADAM KING, an individual; and ROBERT
YOUNGMAN, an individual,

Defendants.

Case No. CV-2011-928

**AFFIDAVIT OF
DEWAYNE BRISCOE**

STATE OF IDAHO)
)ss.
County of Blaine)

I, DEWAYNE BRISCOE, having been duly sworn do hereby depose and say as follows:

1. I am the duly elected Mayor for the City of Sun Valley, Idaho since January 3, 2012,
and served as the President of the City Council before that time for all times relevant to these
proceedings.

AFFIDAVIT OF DEWAYNE BRISCOE- 1.

2. I have personal knowledge of the facts stated herein and could so testify if called as a witness.

3. The Sun Valley City Council authorized me, as Mayor-elect, and then Mayor Wayne Willich to jointly supervise the investigation into personnel matters relating to, among others, Sharon Hammer, Sun Valley City Administrator ("Hammer"). In this capacity, former Mayor Willich and I interviewed and selected Patti Ball as the investigator.

4. No final determination has been made regarding any report produced by Patti Ball. Former Mayor Willich did not have authority to unilaterally "close" the investigation. He has at no time informed me of any such decision, and as far as I know, he never advised me that no additional action should be taken into matters investigated.

5. In fact, I am aware that he authorized, in writing, counsel for the City to communicate certain findings from the report to an appropriate independent party for review regarding possible criminal investigation/charges. This written authorization was never rescinded, as far as I know.

6. I also was told by Mayor Willich that he did not read all of the Ball report, nor did he at anytime before leaving office review any of the exhibits attached to the report.

7. Without consulting with me beforehand, Mayor Willich returned Hammer to work from paid leave on about December 27, 2011.

8. January 4, 2012, was the first day I worked in the Sun Valley City Hall as mayor. Ms. Hammer was working that day. I spent about one and a half hours allowing Ms. Hammer to express whatever she wanted to tell me about her abilities, the allegations, and her position/response to the alleged misconduct, as she understood them. Throughout the day, she would come to me and continue her presentation to me on this matter.

AFFIDAVIT OF DEWAYNE BRISCOE- 2.

9. On Thursday, January 6, 2012, I caused to have Ms. Hammer served with a NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION and NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE IN INTERVIEW PROCESS AND ADVICE OF RIGHTS (*Garrity*).

10. I was aware of, and based, in part, my decision to place Ms. Hammer on paid leave on the following:

- The Ball report.
- Information had come to me that while Ms. Hammer had been returned to work the prior week that there had been reports of retaliatory behavior toward persons who had provided information to Investigator Ball, to which she had been a party or instigator.
- Under her supervision as City Administrator, the email accounts for two of the investigation witnesses had been placed on the server, available to any employee, which may have jeopardized confidential or attorney-client privileged material.
- That while she had returned to work, Ms. Hammer has accessed confidential attorney-client privileged materials between city officials and the city attorney, and divulged those to her husband/attorney James Donoval.

That pursuant to the notices served as referenced herein, Ms. Hammer was specifically directed to return all city records and documents, as well as laptops, and equipment in her possession or control, and she has not returned anything to date, even though it is believed that she still has possession of items to return. This would include, at the least, documents and emails, which she obtained only in her position as City Administrator since December 27, and which I know she now has because her attorney referenced these in a letter to counsel for the City dated January 3, 2012. In that letter, Mr. Donoval admitted, "Finally, since Ms. Hammer has been placed on active duty, she has obtained email correspondences" that included at the least privileged communications between the City Treasurer and Clerk with the City Attorney.

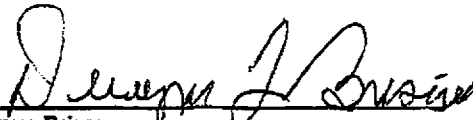
- Her presence at work created hostility reported by at least two critical city employees.
- After returning to work, she allowed the City Clerk to be locked out of her office for a period of time.

AFFIDAVIT OF DEWAYNE BRISCOE- 3.

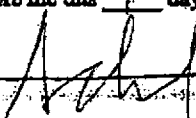
- After returning to work, she allowed emails of persons who presented information to the investigator to have their emails deleted.
- After returning to work, she reportedly allowed her attorney to be in the back offices of City Hall, with possible access to documents that he could not otherwise obtain except through discovery process or public records requests.
- After returning to work, she spent at least some time, drafting and delivering communications related to her lawsuits against the city and its officials.

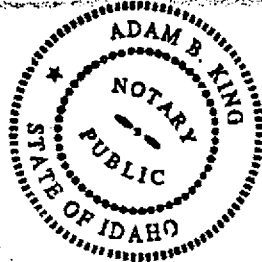
11. Based on my personal observations and knowledge of the workings of the City Hall, I made the decision that it was in the best interests of the City for Ms. Hammer to be on paid leave pending the outcome of the matters under consideration and investigation.

Dated this 9 day of January, 2012.


Dewayne Briscoe

SUBSCRIBED AND SWORN TO before me this 9th day of January, 2012.


Notary Public for Idaho
Residing at:
Commission Expires:



AFFIDAVIT OF DEWAYNE BRISCOE- 4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
PO Box 1499
Sun Valley, ID 83353
Attorney for Plaintiff

☒ U.S. Mail
☐ Hand Delivered
☒ Email: jdonoval@aol.com

R. Keith Roark
The Roark Law Firm
409 N. Main St.
Hailey, ID 83333
Cot Attorneys for Defendant
Nils Ribi

☐ U.S. Mail
☒ Hand Delivered
☐ Email: keith@roarklaw.com
☐ Fax Transmission: (208) 788-3918

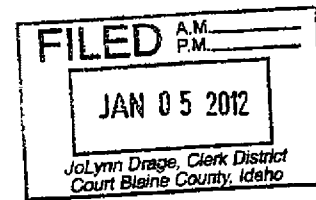

Kirtlan G. Naylor

M:\CRMP\Banner v. Sun Valley\Pleadings\8406_12 Aff of DB.wpd

AFFIDAVIT OF DEWAYNE BRISCOE- 5.

JAN 10 2012

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,
Plaintiff,

v.

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation;
ADAM KING, an individual; and, ROBERT,
YOUNGMAN,
Defendants.

No. CV-2011-928

AFFIDAVIT OF SHARON R. HAMMER

CONFIRMING THE FINAL AND BINDING DISMISSAL OF ALL
ALLEGATIONS OF WRONGDOING ALLEGED BY THE CITY OF SUN
VALLEY AGAINST SHARON R. HAMMER

I, SHARON R. HAMMER, first duly sworn on oath, depose and state as follows:

1) My name is Sharon R. Hammer, I am the Plaintiff herein, and I am competent to testify as to the matters herein. I certify, pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) On information and belief, based on statements made by Sun Valley Finance Manager Michelle Frostenson and allegations asserted by Sun Valley City Council Member Nils Ribi against me at City Of Sun Valley Special Executive Sessions of November 11,

2011 and November 14, 2011, on November 14, 2011 Sun Valley Mayor Wayne Willich ordered that a special independent investigation (the "Special Independent Investigation") be commenced regarding the allegations made by Council Member Ribi at the November 11, 2011 and the November 14, 2011 Sun Valley City Council Executive Sessions. Several days later, Mayor Willich retained a former prosecuting attorney named Patti Ball ("Special Investigator Ball") to thereafter perform the Special Independent Investigation.

3) On November 18, 2011, I received the letter attached as Exhibit A from Mayor Willich placing me on "administrative leave" (the "Administrative Leave Letter"), and describing that the "administrative leave" was not a disciplinary action. At the time Mayor Willich gave me the Administrative Leave Letter, Mayor Willich told me that I was being placed on "administrative leave" to ensure that I was protected from Council Member Ribi and to ensure that there were no insinuations that I had any influence on the Special Independent Investigation.

4) Between November 18, 2011 and the first week of December of 2011, I answered any and all questions posed to me by Special Investigator Ball, submitted documents requested of me to Special Investigator Ball, held an extensive personal one-on-one interview with Special Investigator Ball, and otherwise fully cooperated with Special Investigator Ball and the Special Independent Investigation.

5) On or about December 16, 2011, I discussed settlement potential with Mayor Willich, who also told me that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days. Based on Mayor Willich's statements to me, I directed my attorney to withdraw the

pending Motion For Preliminary And Permanent Injunction until the formal charges, if any, against me could be reviewed or responded to.

6) At some time prior to December 23, 2011, Mayor Willich received an oral report and reviewed a written report from Special Investigator Ball detailing Special Investigator Ball's findings in regards to the Special Independent Investigation. Although I have requested a copy of the written report of Special Investigator Ball related to the Special Independent Investigation, I have been told by Mayor Willich that it is solely in the possession of City Attorney Adam King (a Defendant herein), who has not released a copy of Special Investigator Ball's report to me.

7) On December 23, 2011, I received the email attached as Exhibit B from Mayor Willich, confirming that I was to report back to active duty as the Sun Valley City Administrator and as a Sun Valley firefighter and EMT.

8) On December 28, 2011, I received the annual review attached as Exhibit C from Mayor Willich, indicating that I performed at the highest possible level in every category of performance as the Sun Valley City Administrator. In the annual review, Mayor Willich also gave extensive additional comments as to my high level of performance, dedication and integrity in regards to my service as the Sun Valley City Administrator.

9) On or about December 29, 2011, I was told by Mayor Willich that the Special Independent Investigation found nothing that could warrant any formal charges of discipline being filed against me. On information and belief, the report of Special Investigator Ball only

insinuates that there were potential differences of opinion in regards to my complying with certain provisions of the Sun Valley Personnel Policies And Procedures.

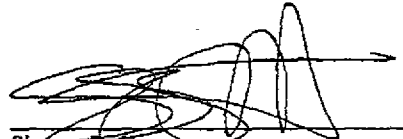
10) On December 29, 2011, I received the email attached as Exhibit D from Mayor Willich confirming to me that nothing Mayor Willich found in the Special Independent Investigation or the report of Special Investigator Ball warranted any further disciplinary action. No formal disciplinary charges were ever issued to me by Mayor Willich. The December 29, 2011 email from Mayor Willich attached as Exhibit D confirms that the investigation of me, commenced based on Council Member Ribi's and Finance Manager Frostenson's unsubstantiated allegations, was closed.

11) Pursuant to Section 2.1(A) of the Sun Valley Personnel Policies And Procedures adopted by the Sun Valley City Council (Exhibit E), as the Sun Valley City Administrator, I have unilateral discretion to make final determinations as to the interpretation of any and all Sun Valley Personnel Policies And Procedures, including in regards to how they apply to myself.

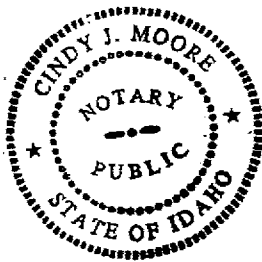
12) Section 8.7 of the Sun Valley Personnel Policies And Procedures adopted by the Sun Valley City Council of which Council Member Ribi is a member (attached as part of the Verified Amended Complaint herein), provides that all decisions of the Mayor Of Sun Valley in regards to disciplinary actions related to all Sun Valley employees, including the Sun Valley City Administrator, are "final and binding", and therefore pursuant to my authority under Section 2.1(A) of the Sun Valley Personnel Policies And Procedures, all future allegations of wrongdoing against me have been found to be dismissed as "final and binding"


FURTHER YOUR AFFIANT SAYETH NOT

Dated this 5 day of January, 2012.

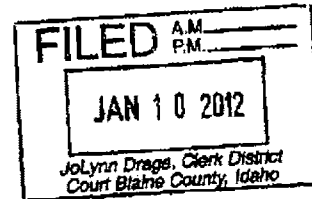

Sharon K. Hammer

SUBSCRIBED TO AND SWORN to before me this 5 day of January, 2012.




Notary Public in and for the State Of Idaho
Residing in the state Of Idaho, Blaine County
My Commission expires: 3-6-2014

James R. Donovan
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,
Plaintiff,

v.

No. CV-2011-928

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation;
ADAM KING, an individual; and, ROBERT,
YOUNGMAN, an individual,
Defendants.

SUPPLEMENTAL AFFIDAVIT OF SHARON R. HAMMER

**IN REPLY TO THE CITY OF SUN VALLEY'S OBJECTION TO SECOND MOTION
FOR TEMPORARY RESTRAINING ORDER**

I, SHARON R. HAMMER, first duly sworn on oath, depose and state as follows:

1) My name is Sharon R. Hammer, I am the Plaintiff herein, and I am competent to testify as to the matters herein. I certify, pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) Since June of 2008, I have been employed as the Sun Valley City Administrator.

accounts during my tenure as Sun Valley City Administrator were Finance Manager Michelle Frostenson, City Clerk Kelly Ek and Former Mayor Willich. It is therefore impossible for me to have stolen, embezzled or otherwise illegally obtained any City Of Sun Valley funds from any City Of Sun Valley bank or other financial accounts.

10) It has also come to my attention during the course of the Special Independent Investigation that I have been alleged to have misused the City Of Sun Valley credit card. There are actually multiple City Of Sun Valley credit cards that are used by approximately ten (10) different City Of Sun Valley employees for various City Of Sun Valley related matters. During the course of my tenure as Sun Valley City Administrator, I certify that each and every time I used the City Of Sun Valley credit card it was for a legitimate purpose related to the operation of the City Of Sun Valley. I also certify that each and every time I used the City Of Sun Valley credit card such use was specifically approved in writing by Finance Manager Frostenson, Former Mayor Willich and a City Of Sun Valley City Council member on a rotating basis, including Council Member Ribi. The City Of Sun Valley Credit Card Policy (Exhibit B) passed by the Sun Valley City Council in November of 2005, specifically makes it the responsibility of Finance Manager Frostenson to ensure that the City Of Sun Valley credit cards are used properly. At no time during the course of my tenure as the Sun Valley City Administrator did Finance Manager Frostenson ever question my use of the City Of Sun Valley credit card.

Mayor Willich Finds No Evidence Of Any Reason To Take Disciplinary Action Against Ms. Hammer, Orders Ms. Hammer Back To Active Duty And Formally Closes The Investigation Against Ms. Hammer

11) On December 20, 2011, as is evidenced by Special Investigator Ball's billings (Exhibit A), Special Investigator Ball issued her "final report" in regards to the Special Independent Investigation.

12) On December 23, 2011, I was given the attached correspondence (Exhibit C) from Former Mayor Willich placing me back on active duty as the Sun Valley City Administrator with all powers and authorities of such position effective December 27, 2011.

13) On Tuesday, December 27, 2011, I returned to work as the Sun Valley City Administrator at approximately 8:00 a.m. During the morning of December 27, 2011, I met with Former Mayor Willich who told me that he had reviewed the report of Special Investigator Ball and notwithstanding that the Special Independent Investigation had never truly been independent and was instead controlled by Attorney Naylor, Former Mayor Willich had determined that there was no evidence of any criminal conduct whatsoever on my part or any reason to bring any disciplinary action against me. Former Mayor Willich told me that he considered the investigation into my conduct to be completed and finished without any disciplinary charges being assessed against me. On December 29, 2011, I received the attached email (Exhibit D) from Former Mayor Willich confirming that he considered the disciplinary investigation instituted against me to be closed.

14) On January 5, 2012, I was served a written notice dated January 4, 2012 by Sun Valley Police Chief Cam Daggett, from Current Mayor Briscoe placing me on "administrative leave" for a second time. The notice provides me with no notice of what the allegations against me are that warranted me being placed on "administrative leave" for a second time.

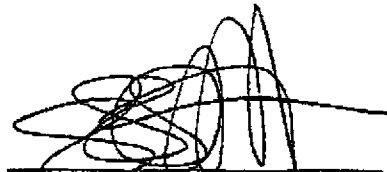
Between December 27, 2011 And January 5, 2011, Ms. Hammer Possessed All Legal Authority To Continue To Act As The Sun Valley City Administrator, Without Any Requirement To Report To Either Attorney Naylor Or Current Mayor Briscoe

15) As Former Mayor Willich had confirmed that the Special Independent Investigation was closed and that no disciplinary actions were going to be taken against me, the Notice Of Continued Paid Administrative Leave Pending Investigation and the Notice Of Administrative

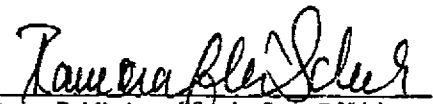
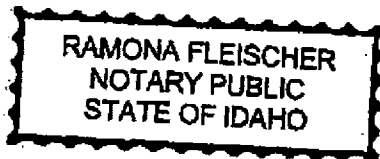
27) On January 4, 2012, the day before I was served with notice that I was placed on "administrative leave" for a second time, the Idaho Human Rights Commission entered a formal Notice Of Charge Of Discrimination against the City Of Sun Valley (Exhibit I).

FURTHER YOUR AFFIANT SAYETH NOT

Dated this 10 day of January, 2012.


Sharon R. Hammer

SUBSCRIBED TO AND SWORN to before me this 10th day of January, 2012.


Notary Public in and for the State Of Idaho
Residing in the State Of Idaho, Blaine County
My Commission expires: 10/16/2014

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE
3

4 SHARON R. HAMMER,)

5 Plaintiff,)

6 vs.)

Case No. CV-2011-928

7 NILS RIBI, an individual; THE)
8 CITY OF SUN VALLEY, an Idaho)
9 municipal corporation; ADAM)
KING, an individual; and)
ROBERT YOUNGMAN, an individual,)

10 Defendants.)
11
12
13

14 **TESTIMONY OF WAYNE WILlich**
15
16

17 The above-entitled matter came on for hearing
18 on **Wednesday, January 11, 2012**, at the hour of 9:30 a.m.,
19 at the Blaine County Courthouse, Hailey, Idaho.

20 BEFORE: The Honorable Randy Stoker
21
22
23
24
25

Susan P. Israel, CSR No. 244

P. O. Box 1379

Ketchum, ID 83340

72081 700 5512
EXHIBIT I

A P P E A R A N C E S

For the Plaintiff: JAMES R. DONOVAL, ESQ.
Attorney at Law
P. O. Box 1499
Sun Valley, Idaho 83353

For the Defendants: KIRTLAN G. NAYLOR, ESQ.
Naylor & Hales, P.C.
Attorneys at Law
950 West Bannock Street
Suite 610
Boise, Idaho 83702

For the Defendant: R. KEITH ROARK, ESQ.
(Nils Ribi) The Roark Law Firm, LLP
409 North Main
Hailey, Idaho 83333

1 A. The written agreement was an investigation for
2 the City of Sun Valley, and as the chief administrative
3 officer, I signed the agreement, and that's what we entered
4 into.

5 Q. (By Mr. Donoval) Okay. And as part of that
6 written agreement, was Ms. Ball authorized to report to
7 Attorney Naylor as part of that investigation as part of
8 the written agreement? Was it in the written agreement --

9 A. No.

10 Q. -- that she --

11 A. No.

12 Q. Okay.

13 Subsequent to the hiring of Ms. Ball, did you
14 authorize Ms. Ball to report to Attorney Naylor in regards
15 to the investigation?

16 A. No.

17 Q. To the best of your knowledge, did Ms. Ball
18 report to Attorney Naylor anyway?

19 A. Yes.

20 Q. Now, during the period of time between
21 December -- sorry, between November 23rd and approximately
22 December 20th, did Ms. Ball do this investigation? Did she
23 perform her duties as an investigator?

24 A. Yes.

25 Q. Okay.

1 she started working?

2 A. No.

3 Q. Okay. Was it in the range of November 20th
4 through November 25th?

5 A. As I recall, I think I signed the agreement
6 November 18th, but that could be -- I think I signed the
7 agreement, the engagement letter, November 18th.

8 Q. And during -- subsequent to November 18th,
9 approximately, were you aware that Ms. Ball was performing
10 this investigation?

11 A. Yes.

12 Q. Okay.

13 And did you -- can you describe what, if
14 anything, you personally did in regards to participating in
15 that investigation?

16 A. I was interviewed on the following Tuesday or
17 Wednesday, I can't remember which.

18 Q. During the period of time in late November
19 through, say, mid December, did Ms. Ball give you --
20 provide you with any updates of what was going on with the
21 investigation?

22 A. There was a --

23 MR. NAYLOR: That's a yes or no, Your Honor.

24 A. Oh. Yes.

25 Q. (By Mr. Donoval) Okay. And can you describe

1 or myself was present. So we need some foundation on what
2 conversations and who was present before we start talking
3 about what was said.

4 THE COURT: As to the foundational objection,
5 that's sustained. Lay some foundation.

6 Q. (By Mr. Donoval) During that period of time
7 between, say, the end of November and mid December when you
8 had these conversations with Ms. Ball, were any of them
9 with just you and Ms. Ball individually?

10 THE WITNESS: No objection?

11 A. No.

12 Q. (By Mr. Donoval) Okay. So during those
13 conversations at all times was at least Attorney Naylor
14 present when you had these conversations with Ms. Ball?

15 THE WITNESS: Your Honor?

16 THE COURT: The question -- do you understand
17 the question?

18 THE WITNESS: Yeah. I'm trying to answer
19 correctly. Let me try this.

20 There was a summary report given and Attorney
21 Adam King and Mayor Elect Briscoe were in the room.

22 Q. (By Mr. Donoval) Was Attorney Naylor present
23 when you reviewed that report or was he on the phone, do
24 you remember?

25 A. On the phone, I think.

1 Q. Okay.

2 Was there only one time that you talked to
3 Patti Ball or was there multiple times that you talked to
4 Patti Ball?

5 A. Just that review.

6 Q. Okay.

7 So just for the clarification of the Court,
8 between November, whatever, 18th, when Ms. Ball started the
9 investigation and when the final report was prepared, other
10 than your interview, did you have any other conversations
11 with Patti Ball?

12 A. May I correct your final report to say it was
13 characterized as a draft or interim.

14 Q. Okay.

15 A. And the answer is no, I had no other
16 conversations other than those.

17 Q. Okay.

18 So the only conversation you had with Patti
19 Ball was at the end of the time -- other than your
20 interview, was at the end of the time when Ms. Ball had
21 completed a report for you; correct?

22 A. Right.

23 Q. Okay. And at that conversation who was
24 present?

25 A. At the report?

1 Q. Correct.

2 A. City Attorney Adam King, Mayor Elect Briscoe,
3 and myself.

4 Q. And did -- in that meeting, I'm going to call
5 it a meeting, in that meeting did Ms. Ball give you an oral
6 report of what she had found during the investigation?

7 MR. NAYLOR: Objection.

8 MR. DONOVAL: I'm not asking for what she said.
9 I'm asking whether she gave a report.

10 MR. NAYLOR: It goes to the content, Your
11 Honor. He's already testified that she was there in the
12 conversations. That's all he gets.

13 THE COURT: I think that is a yes or no answer.
14 I'll overrule the objection.

15 Q. (By Mr. Donoval) So did Ms. Ball at that
16 meeting give you an oral report of what she had found
17 during the investigation?

18 A. Yes.

19 Q. Okay.

20 And can you describe what that oral report
21 indicated to you?

22 MR. NAYLOR: Objection.

23 MR. DONOVAL: Again, it's not attorney-client
24 privilege. What Ms. Ball reports to Mayor Willich when
25 Ms. Ball was not an attorney is not covered by

1 THE COURT: Let's get back to the questions and
2 answers. I don't want to argue this whole case at this
3 point. What I want to hear is the evidence that everybody
4 has to put on, and then we'll hear argument about it.

5 So I've sustained the objection as to inquiry
6 as to other employees coming -- information coming out of
7 this report.

8 So ask your next question.

9 MR. DONOVAL: Just two quick points --

10 THE COURT: I don't want to hear any more
11 points, Mr. Donoval. I want to hear another question if
12 you have one.

13 MR. DONOVAL: Let me take a breath, Judge,
14 because we went through that whole 10-minute spiel.

15 Q. (By Mr. Donoval) Subsequent to your
16 conversation with Ms. Ball and reviewing the report, was it
17 your belief that there were portions of that report
18 unrelated to Ms. Hammer? And I don't want to hear the
19 specifics, but subjects of that report unrelated to
20 Ms. Hammer that were not conclusive?

21 MR. ROARK: Objection; leading.

22 THE COURT: Overruled.

23 A. There were multiple elements of the report
24 subsequent to when I received it that I did my own I'll say
25 mini-investigations, and there were several problems with

1 certain elements of the report.

2 Q. (By Mr. Donoval) And those elements were
3 unrelated to Ms. Hammer?

4 A. They -- how am I going to describe this
5 without --

6 Q. Let me strike the question.

7 Assuming that those elements of the report
8 were, let's say, repaired, would that in any way have
9 changed your opinion on whether Ms. Hammer should have had
10 any disciplinary action taken against her?

11 A. No.

12 Q. Okay.

13 Now, on December 23rd isn't it true that you
14 sent Ms. Hammer an email asking her to come back to active
15 duty?

16 MR. ROARK: Objection; leading, "isn't it
17 true."

18 THE COURT: Sustained.

19 MR. DONOVAL: Let me rephrase the question.

20 Q. (By Mr. Donoval) At some point in time at the
21 end of December did you communicate with Ms. Hammer about
22 her returning to active duty?

23 A. Yes.

24 Q. And can you describe what that communication
25 was?

1 correct?

2 A. Specifically Ms. Hammer, right.

3 MR. ROARK: All right. Thank you. I have
4 nothing further.

5 THE COURT: Redirect?

6 MR. DONOVAL: Limited to cross.

7 REDIRECT EXAMINATION

8 BY MR. DONOVAL:

9 Q. Mayor Willich, when you instituted the
10 investigation, it wasn't just in regards to Ms. Hammer; is
11 that correct? It wasn't solely in regards to allegations
12 against Ms. Hammer; is that correct?

13 A. That's correct.

14 Q. Okay.

15 And can you provide to the Court your
16 impression after the independent investigation started of
17 whether, in fact, it turned into a prosecution against
18 Ms. Hammer?

19 MR. ROARK: Objection, Your Honor.

20 MR. NAYLOR: Objection.

21 MR. DONOVAL: He can give his impression.

22 THE COURT: Sustained. I don't know what the
23 objection is, but I would sustain it. Impression is
24 irrelevant.

25 Q. (By Mr. Donoval) Mr. Roark asked you a

1 Q. Did you communicate with either of them by
2 email?

3 A. Not that I recall.

4 Q. Not that you recall?

5 A. Yeah.

6 Q. Did you share with them either directly or
7 through any intermediary any of the specific allegations
8 that were made in Patti Ball's report about the possible
9 criminal activity of Sharon Hammer?

10 MR. DONOVAL: Objection, Your Honor. The
11 report wasn't issued until December 20th approximately, so
12 foundation would be appreciated in regards to that
13 question.

14 THE COURT: I think the question was ever.

15 MR. ROARK: Ever.

16 THE COURT: Overruled.

17 A. No.

18 Q. (By Mr. Roark) And, finally, you keep a diary
19 that you referred to earlier in your testimony. That's a
20 daily diary?

21 A. Yeah. It looks like this (indicating), but
22 it's for the correct year.

23 Q. And so you mark in that all of your
24 appointments for a particular day?

25 A. Most of them.

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REPORTER'S CERTIFICATE

I, SUSAN P. ISRAEL, CSR #244, Official Court
Reporter, Fifth Judicial District, State of Idaho, do
hereby certify that the foregoing transcript, consisting of
Pages 1 to 74, inclusive, is a true and accurate record of
the proceedings had on the date and at the time indicated
therein as stenographically reported by me to the best of
my ability and contains all of the material requested.

IN WITNESS WHEREOF, I have hereunto set my hand
this 26th day of July, 2012.

SUSAN P. ISRAEL, CSR NO. 244

**BEFORE THE IDAHO HUMAN RIGHTS COMMISSION
AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

SHARON R. HAMMER,
Complainant,

v.

THE CITY OF SUN VALLEY,
Respondent.

No. E-0112-241
38C-2012-00122


**AFFIDAVIT OF WAYNE WILlich
FORMER MAYOR OF THE CITY OF SUN VALLEY**

I, WAYNE WILlich, first duly sworn on oath, depose and state as follows:

1) That my name is Wayne Willich, and from the first week of January of 2008 through the first week of January of 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

The Termination Of Former City Administrator Virginia Egger

2) Subsequent to becoming Mayor Of Sun Valley, Sun Valley City Council Member Nils Ribi showed me a binder he had kept related to acts of financial misconduct that he believed former Sun Valley City Administrator Virginia Egger had performed while she was the Sun Valley City Administrator through the summer of 2007. The information that Council Member Ribi had collected relating to Ms. Egger's financial misconduct had been


2/24/2012
IHRC Hammer 35

provided to him by Sun Valley Treasurer Michelle Frostenson and included paperwork associated with payments Ms. Egger had supposedly authorized without Sun Valley City Council approval. Early in my administration, Council Member Ribí also told me on multiple occasions that he was adamant that Ms. Egger be terminated as the Sun Valley City Administrator during the spring and summer of 2007 due to Ms. Egger's acts of misconduct.

3) Subsequent to becoming Mayor Of Sun Valley, I held multiple conversations with former Mayor Jon Thorson, Sun Valley City Council members and Sun Valley staff members. During those conversations I was informed by former Mayor Thorson and City Of Sun Valley staff that former Sun Valley City Administrator Virginia Egger was involved in multiple arguments with Council Member Ribí. I was also informed that the majority of City Of Sun Valley staff members thought that Ms. Egger had been extremely difficult to work with. Former Mayor Thorson told me that the relationship between Council Member Ribí and Ms. Egger was so contentious that he directed Ms. Egger and Council Member Ribí to attend therapy and counseling to seek to resolve their contentious relationship. During my discussions and investigation, I also discovered that contrary to Ms. Egger's public claims that she resigned in June of 2007, in actuality Ms. Egger was terminated by former Mayor Jon Thorson and the City Of Sun Valley, and was paid a severance payment of three months salary as was required pursuant to Ms. Egger's written contract with the City Of Sun Valley. Former Mayor Thorson told me that Ms. Egger's termination was done in large part due to her inability to get along with Council Member Ribí. I was informed by City Of Sun Valley staff members that former Mayor Thorson had an agreement with Ms. Egger that she could publicly say she had resigned rather than admitting that she was actually terminated.


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2/24/2012

The Terms Of Sharon R. Hammer's City Administrator Employment Agreement

4) In June of 2008, the City Of Sun Valley entered into a written City Administrator Employment Agreement with Sharon R. Hammer, which was drafted by then Sun Valley City Attorney Rand Peebles. At the time I entered into the City Administrator Employment Agreement with Ms. Hammer, there was no discussion related to whether Section 3, Paragraph A waived any potential discrimination, harassment, retaliation or other non-contract claims should the City Administrator Employment Agreement be terminated, nor was there any intent on my part that Ms. Hammer waive any future discrimination, harassment, retaliation or other non-contract claims if the City Of Sun Valley chose to ever terminate the City Administrator Employment Agreement pursuant to the "without cause" provisions of Section 3, Paragraph A. Any assertions by the City Of Sun Valley or its current attorneys that Ms. Hammer waived any discrimination, harassment, retaliation or tort claims, separate from her contract claims, including her claims presented to the Idaho Human Rights Commission and in her Idaho Protection Of Public Employees Act law suit, are simply not based on mine or Ms. Hammer's agreements entered into in June of 2008

Ms. Hammer's Complaints Of Council Member Ribi's Harassment, Abuse And Other Hostile Acts

5) On multiple occasions between October of 2009 and September of 2011, Ms. Hammer reported to me that Council Member Ribi had been hostile to her and had harassed her because Ms. Hammer had told Council Member Ribi that he was not authorized to contact Sun Valley planning staff employees Mark Hofman and Diane Shay in regards to zoning matters pending before the Sun Valley City Council for which Council Member Ribi was to vote. In particular, it is my opinion that Council Member Ribi inappropriately tried to


2/24/2012

IHRC Hammer 37

influence the City Of Sun Valley staff members mentioned, and thereafter treated Ms.

Hammer improperly and in a hostile manner when Ms. Hammer told him to refrain from

influencing such staff persons, including but not limited to:

October of 2009 during hearings on the De Novo Independence, LLC comprehensive plan amendment;

July through November of 2010 during hearings on the 429 Dollar Mountain Zoning Map Amendment;

June of 2011 during Sun Valley area of impact hearings;

August and September of 2011 during Sun Valley Co. comprehensive plan amendments;

September of 2011 during Sun Valley area of impact discussion.

6) On multiple occasions between April of 2009 and September of 2011, Ms.

Hammer reported to me that Council Member Ribi had also been hostile to her and had

harassed her because Ms. Hammer had told Council Member Ribi that Ms. Hammer took

direction from me and that Council Member Ribi was not authorized to give Ms. Hammer any

directions without my approval. In particular, it is my opinion that thereafter Council

Member Ribi treated Ms. Hammer improperly and in a hostile manner, when she told

Council Member Ribi that she would follow my direction and not his in regards to:

April of 2009 enactment of fund balance, property tax levy, budget and appropriation, council powers, and telecommunication devices policies;

May of 2009 council priorities;

July of 2009 Amtrak service resolution;

January of 2010 through May of 2010 council powers and ethics;

March of 2010 CAFR report;

June of 2010 amendment of property tax policy;

August and September of 2010 contract for Sun Valley resort marketing;

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2/24/2012

IHRC Hammer 38

October of 2010 contract for audit preparation;

November of 2010 policy on external contracts;

March of 2011 audit comments, policy on consolidated dispatch and council member powers and ethics;

April through September of 2011 capital improvement plan;

April of 2011 audit comments and management responses; mandatory garbage collection and marketing alliance bylaws;

July of 2011 Cox Cable contract;

September of 2011 contract for emergency services and budget amendments.

7) On multiple occasions described in Paragraphs 5 and 6 herein, Ms. Hammer described to me that when I was not present in the Sun Valley City Hall, that Council Member Ribi would stand in the doorway of her office and in a hostile manner argue with her when Ms. Hammer would tell Council Member Ribi that he needed to get approval from me before Ms. Hammer would do something that Council Member Ribi wanted Ms. Hammer to do. During several of those incidents, Ms. Hammer told me that Council Member Ribi had yelled at her "The Mayor Does Not Know What His Job Is!". In addition, on several occasions I was present in Sun Valley City Hall and observed Council Member Ribi being confrontational with Ms. Hammer in Ms. Hammer's office.

8) On multiple occasions related to the incidents described in Paragraph 5 and 6 above, Ms. Hammer complained to me about Council Member Ribi's inappropriate and hostile conduct towards her, and that she was becoming more concerned about Council Member's hostility. During several of these discussions, Sun Valley City Attorney Adam King was also present. Based on my discussions with Ms. Hammer, on more than one occasion I mentioned Ms. Hammer's complaints to Mr. Ribi and publicly reminded Council

Member Ribi in Sun Valley City Council meetings to not contact Sun Valley staff members about administrative or operational matters without my knowledge, and to treat all City Of Sun Valley employees in an appropriate manner.

9) On multiple occasions after my election as Mayor Of Sun Valley in November of 2007, I held discussions with Sun Valley City Council Member Joan Lamb in which Council Member Lamb disclosed to me that Council Member Ribi had been verbally abusive and hostile to several City Of Sun Valley staff members going back to Council Member Ribi's service as a member of the Sun Valley Planning And Zoning Commission. Subsequent to Ms. Hammer's appointment as the Sun Valley City Administrator in June of 2008, on several occasions Council Member Lamb also disclosed to me her concerns about Council Member Ribi's unacceptable and hostile attitude towards Ms. Hammer, and I told her that I had discussed the issue with Ms. Hammer and City Attorney King as well as Council Member Ribi himself. On several occasions between 2009 and 2011, in public Sun Valley City Council meetings, I remember Council Member Lamb chastising Council Member Ribi for his improper contact and treatment of City Of Sun Valley staff members, including Ms. Hammer.

10) During public Sun Valley City Council meetings of April 16, 2009; January 21, 2010; May 2, 2010; and, April 21, 2011, I was required to specifically remind Sun Valley City Council members, and in particular Council Member Ribi, that Sun Valley City Council members should not contact staff members, including Ms. Hammer, and instead contact me regarding City Of Sun Valley issues, which had been the source of Council Member Ribi's hostility towards, and harassment of, Ms. Hammer.

(initials)

2/24/2012

IHRC Hammer 40

11) During my tenure as Mayor Of Sun Valley, on multiple occasions I held conversations with Sun Valley City Clerk Kelly Ek, in which City Clerk Ek complained that Council Member Ribí had been verbally abusive to City Clerk Ek and otherwise harassed her. On several of those occasions, City Clerk Ek told me that Council Member Ribí's actions had caused her distress and caused her to cry. On several occasions, City Clerk Ek was so upset with how she had been treated by Council Member Ribí that I authorized her to go home until she was ready to return to work.

12) During my tenure as Mayor Of Sun Valley, on multiple occasions I held conversations with Sun Valley Treasurer Michelle Frostenson, in which City Treasurer Frostenson also complained that Council Member Ribí had been verbally abusive to City Clerk Frostenson and otherwise harassed her. City Treasurer Frostenson told me that Council Member Ribí tried to get City Treasurer Frostenson to revise documents and perform functions that Council Member Ribí was not authorized to do without mine or Ms. Hammer's approval. On several of those occasions, City Treasurer Frostenson told me that Council Member Ribí's actions had caused her distress.

13) On August 2, 2011, I met with City Attorney King at his office in Ketchum, Idaho. I told City Attorney King that I wanted to confidentially discuss issues related to Council Member Ribí. City Attorney King told me he would keep our discussion confidential. I then told City Attorney King that since Council Member Ribí's re-election to the Sun Valley City Council in November of 2009, I had been approached by multiple City Of Sun Valley staff members complaining about Council Member Ribí's improper contact and attempts to direct City Of Sun Valley staff members as to what to do, without mine or


2/24/2012
IHRC Hammer 41

Ms. Hammer's approval. I stated to City Attorney King that many of the City Of Sun Valley staff members also complained that Council Member Ribi was verbally abusive and hostile towards them. I told City Attorney King that my greatest concern, however, was that Council Member Ribi seemed to target females in particular. I told City Attorney King that both City Clerk Ek and City Treasurer Frostenson had discussed with me Council Member Ribi's hostility towards both of them on multiple occasions, and City Attorney King told me he was also aware of City Clerk Ek's and City Treasurer Frostenson's complaints about Council Member Ribi. I also reminded City Attorney King of the multiple conversations he, I and Ms. Hammer had held regarding Council Member Ribi's harassment, abuse and hostility towards Ms. Hammer. City Attorney King told me he agreed that Council Member Ribi's conduct towards Ms. Hammer was unacceptable, but that because Council Member Ribi was an elected official there was nothing that I could do to discipline Council Member Ribi, other than to discuss the issues with Council Member Ribi and ask Council Member Ribi to act appropriately. Subsequent to my discussion with City Attorney King, based on City Attorney King's billings (Exhibit A) indicating that he thereafter held a conference with someone other than myself that day after our meeting, on information and belief, City Attorney King discussed my concerns about Council Member Ribi's harassment and abuse of City Clerk Ek, City Treasurer Frostenson and Ms. Hammer directly with Council Member Ribi.

14) On September 15, 2011, at the end of a Sun Valley City Council meeting, Ms. Hammer reported to me that Council Member Ribi had assaulted her during a break in the meeting. Ms. Hammer told me that when Ms. Hammer told Council Member Ribi that she would have to discuss a matter about budget amendments with me rather than doing what Council Member Ribi had asked, Council Member Ribi raised his arms in a threatening manner, came towards her and shouted at her, seriously scaring Ms. Hammer. Ms. Hammer

was visibly upset at Council Member Ribi's actions. City Attorney King was present when Ms. Hammer described the incident to me. Subsequent to the September 15, 2011 incident, I discussed the incident with Council Member Ribi and told him that he simply cannot act that way towards Ms. Hammer.

The Flawed Investigation Into Council Member Ribi's Harassment, Abuse And Hostile Acts Towards Ms. Hammer

15) On November 14, 2011, I and the Sun Valley City Council commenced what was supposed to be an independent investigation of several matters, to be performed by Special Investigator Patti Ball. The investigation was intended to include a thorough investigation of Ms. Hammer's, City Clerk Ek's and City Treasurer's Frostenson's harassment complaints against Council Member Ribi. It was my intent that Special Investigator Patti Ball was to report solely to me. After Ms. Hammer filed an Idaho Protection Of Public Employees Act law suit against the City Of Sun Valley on November 21, 2011, the City Of Sun Valley's insurance company ("ICRMP") appointed attorney Kirtlan Naylor to defend the City Of Sun Valley against Ms. Hammer's law suit. Thereafter, Attorney Naylor demanded that he be in control of and direct the Specil Investigation, and against my wishes, Special Investigator Ball thereafter reported to Attorney Naylor instead of me. Ms. Ball's billings for the period of November 27, 2011 to January 4, 2012 (Exhibit B), clearly indicates that immediately upon her appointment as the Special Investigator she began reporting to Attorney Naylor rather than to me, and continued to do so through my tenure as Mayor Of Sun Valley which ended on January 3, 2012. Special Investigator Ball's billings (Exhibit B) indicate that there were at least twenty one (21) correspondences between Special Investigator Ball and Attorney Naylor during a two month period, when Special Investigator Ball was supposed to have been independent of Attorney Naylor's influence in defending Council Member Ribi against

WV
2/24/2012
IHRC Hammer 43

Ms. Hammer's claims of harassment, and was instead to report solely to me. Ultimately, I found that Attorney Naylor and Special Investigator Ball conspired to turn what was supposed to be an independent investigation of several matters, into a purposeful prosecution of Ms. Hammer and a method to specifically seek to exonerate Council Member Ribl from Ms. Hammer's serious allegations of harassment, abuse and hostility by Council Member Ribl.

16) Ms. Hammer was interviewed by Special Investigator Ball very early during the Special Investigation. On several occasions, after Special Investigator Ball had also interviewed City Of Sun Valley employees and Sun Valley City Council members, including myself and Council Member Ribl, I asked Attorney Naylor and Special Investigator Ball when Ms. Hammer would be able to respond to any remaining allegations or assertions against her. Both Attorney Naylor and Special Investigator Ball responded that Special Investigator Ball had already met with Ms. Hammer and did not need to do so any further, which I found unacceptable. When Special Investigator Ball presented me with her findings in mid-December of 2011, I found no evidence of any "criminal" acts of Ms. Hammer nor did I find any evidence that Ms. Hammer had done anything that required any further disciplinary actions against Ms. Hammer. On December 23, 2011, I notified Ms. Hammer that she was being placed back on active duty status with full rights and authority as the Sun Valley City Administrator. Based on my multiple conversations with Attorney Naylor and Special Investigator Ball, it became clear to me that during the course of the Special Investigation that both Attorney Naylor and Special Investigator Ball were seeking to find anything that would substantiate Council Member Ribl's public assertions that Ms. Hammer had done something "criminal" in order to protect ICRMP from potential damage claims asserted by Ms. Hammer in her Idaho Protection Of Public Employees Act law suit against

WA
2/24/2012
IHRC Hammer 44

the City Of Sun Valley and Council Member Ribi, rather than performing an "independent" investigation.


17) In regards to Ms. Hammer's harassment and hostile work environment claims against Council Member Ribi, in reality, Special Investigator Patti Ball only performed a cursory investigation, including failing to fully interview all witnesses to Council Member Ribi's harassment and abuse of Ms. Hammer. In particular, on multiple occasions I sought for Special Investigator Ball to interview several persons with knowledge of Council Member Ribi's abusive conduct, including City Of Sun Valley Administrative Assistant David Blampied. In particular, I studiously sought for Special Investigator Ball to interview female Sun Valley City Council member Joan Lamb, but Special Investigator Ball refused to do so. When I ultimately received Special Investigator Ball's report I found it to be so flawed and lacking in any efforts to investigate Ms. Hammer's allegations against Council Member Ribi, that I discounted the entire report related to Special Investigator Ball's findings as to Council Member Ribi's harassment of Ms. Hammer. Any assertion by Attorney Naylor that Special Investigator Patti Ball's findings were based on a thorough and independent investigation of Council Member Ribi's actions are simply not factual.

(Handwritten initials)

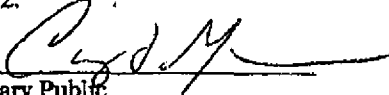
2/24/2012

IHRC Hammer 45

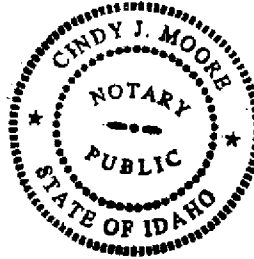
Further Affiant sayeth not.


Wayne Wilch

Subscribed To And Sworn Before
Me This 24 Day Of FEBRUARY
2012.


Notary Public

Residing in BLAINE County, IDAHO
(EXPIRES 3-6-2014)

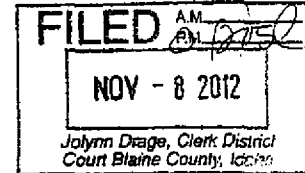




2/24/2012
IHRC Hammer 46

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,
Plaintiff (Dismissed) - CounterDefendant,

PATRICIA BROLIN-RIBI,
Plaintiff,

v.

JAMES R. DONOVAL
Defendant-CounterPlaintiff,

No. CV-2011-1040

AFFIDAVIT OF WAYNE WILLICH
FORMER MAYOR OF THE CITY OF SUN VALLEY

I, WAYNE WILLICH, first duly sworn on oath, depose and state as follows:

1) My name is Wayne Willich, and from the first week of January of 2008 to January 4, 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) On November 11, 2011, a special executive session of the Sun Valley City Council was called by three members of the Sun Valley City Council, namely, City Council president Dewayne Briscoe, City Council member Nils Ribi, and City Council member Robert Youngman. City Council member Joan Lamb did not attend the

November 11, 2011 Sun Valley City Council executive session because she was out of town.

3) During the November 11, 2011 executive session of the Sun Valley City Council, Council Member Ribí asserted that he had obtained information from then Sun Valley Treasurer Michelle Frostenson that then Sun Valley City Administrator Sharon Hammer had committed certain acts of misconduct, including what Council Member Ribí claimed were possibly criminal acts.

4) After Council Member Ribí asserted that Former Administrator Hammer had committed certain acts of misconduct, Former Treasurer Frostenson was called into the November 11, 2011 executive session of the Sun Valley City Council, and claimed that Former Administrator Hammer had committed certain acts of misconduct.

5) At the end of the November 11, 2011 executive session of the Sun Valley City Council, it was agreed that I would speak with Former Administrator Hammer, and that another executive session of the Sun Valley City Council would be held on Monday, November 14, 2011, where a plan to go forward would be discussed.

6) At the November 14, 2011 executive session of the Sun Valley City Council, in my opinion, the documents that Former Treasurer Frostenson had provided to the Sun Valley City Council provided only anecdotal evidence of any misconduct on the part of Former Administrator Hammer.

Wk

7) At the end of the executive session of the Sun Valley City Council of November 14, 2011, I agreed to commence an investigation of the allegations of misconduct made by Council Member Ribí and Former Treasurer Frostenson against Former Administrator Hammer.

8) At no time during either the November 11, 2011 or November 14, 2011 executive sessions of the Sun Valley City Council was there any discussion of using the investigation in regards to any potential or threatened litigation. At no time during either the November 11, 2011 or November 14, 2011 executive sessions of the Sun Valley City Council was there any discussion of the investigation being commenced to work with the Blaine County Prosecutor's office to participate in a criminal investigation. The direction that I received from the Sun Valley City Council at the November 14, 2011 executive session was solely to perform a disciplinary investigation related to Former Administrator Hammer, solely for internal City Of Sun Valley purposes.

9) After the executive session of the Sun Valley City Council of November 14, 2011, I directed Sun Valley City Attorney Adam King to obtain a list of possible independent investigators to perform the disciplinary investigation related to the allegations of misconduct against Former Administrator Hammer. I gave City Attorney King no other authority of any kind in regards to the disciplinary investigation.

10) After reviewing the choices of investigators provided to me by City Attorney King, and telephone interviews with the candidates, on or about November 22, 2011, I selected Patricia Ball to perform what was to be an independent disciplinary investigation solely related to the allegations against Former Administrator Hammer for internal City Of Sun Valley purposes.

11) During the initial discussions I held with Investigator Ball, I explained to her that she would be performing an independent internal City Of Sun Valley disciplinary investigation related to the allegations asserted against Former Administrator Hammer. At no time during the discussions that I held with Investigator Ball did we ever discuss that she would be investigating matters related to litigation of any type or preparing any reports to assist the City Of Sun Valley in preparation for defending the City Of Sun Valley related to any threatened or pending litigation.

12) I certify that the sole reason that as the Mayor Of Sun Valley I retained Investigator Ball to perform an investigation was to assist me in my duties as the Mayor Of Sun Valley to investigate and take necessary disciplinary actions related to Former Administrator Hammer, if required, and for no other reason.

13) On November 23, 2011, I signed the attached engagement letter with Investigator Ball related to her services to perform the internal City Of Sun Valley disciplinary investigation. I certify that although I discussed the letter with Council President Briscoe and City Attorney King, no mention was made by either of them that



Investigator Ball was being retained to do anything other than an internal City Of Sun Valley disciplinary matter, and in particular, no mention was ever made by either Council President Briscoe or City Attorney King that Investigator Ball's activities were in any way related to threatened or pending litigation.

14) I certify that attorney Kirtian Naylor had no input in regards to the selection of Investigator Ball as an investigator nor did I discuss in any way the duties of Investigator Ball in regards to the investigation to be performed by Investigator Ball prior to the signing of the engagement letter attached herein.

15) Subsequent to retaining Investigator Ball, I agreed that Attorney Naylor could receive copies of Investigator Ball's reports and be updated by myself, Council President Briscoe and City Attorney King as the status of Investigator Ball's investigation. However, I deny that I ever gave Attorney Naylor any authority to direct or actively participate in any way in the investigation that Investigator Ball was performing, including that I never authorized Attorney Naylor to directly communicate with Investigator Ball.

16) During my November 29, 2011 formal interview with Investigator Ball related to the misconduct allegations against Former Administrator Hammer, for the first time I discussed harassment and misconduct allegations that had been made by Former Administrator Hammer and other City Of Sun Valley employees against Council Member Ribí with Investigator Ball. At that interview, I directed Investigator Ball to also

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seek information from other interviewees about the harassment and misconduct allegations against Council Member Ribi. At no time during the discussion with Investigator Ball did I suggest that the information Investigator Ball was to obtain related to Council Member Ribi's alleged misconduct was for anything other than internal Sun Valley disciplinary proceedings, and never suggested or intended that the information that Investigator Ball would receive about Council Member Ribi was to assist Sun Valley in relation to any pending or threatened litigation.

17) Sometime subsequent to the retention of Investigator Ball, I discovered that Investigator Ball and Attorney Naylor were involved in extensive discussions related to the disciplinary investigation being performed by Investigator Ball, without my knowledge or my approval.

18) Subsequent to my discovery of the communications between Investigator Ball and Attorney Naylor in regards to the disciplinary investigation, Investigator Ball thereafter began reporting to Attorney Naylor rather than myself, in violation of my directions to Investigator Ball.

19) Subsequent to my discovery of the surreptitious actions of Investigator Ball and Attorney Naylor in regards to the disciplinary investigation, I discussed the matter with Attorney Naylor, and told Attorney Naylor that I believed that he was improperly seeking to influence the investigation being performed by Investigator Ball. Attorney Naylor's response to me was that he was paid by and represented the Idaho Counties Risk

(wa)

Management Program ("ICRMP"), the City Of Sun Valley's insurer, that he did not report to me, and that he was protecting ICRMP against civil claims that were being made by Former Administrator Hammer against the City Of Sun Valley.

20) Subsequent to my conversation with Attorney Naylor, I contacted an ICRMP official and asked that Attorney Naylor be replaced as the ICRMP supplied counsel for the City Of Sun Valley, but was told by ICRMP representatives that ICRMP had the sole direction in determining who the City Of Sun Valley's legal counsel would be related to claims by Former Administrator Hammer which were being defended by ICRMP.

21) Subsequent to my conversations with ICRMP officials, Investigator Ball and Attorney Naylor continued to actively communicate in regards to the disciplinary investigation being performed by Investigator Ball, without my approval or authority, and Investigator Ball thereafter continued to take direction related to the disciplinary investigation from Attorney Naylor rather than myself.

22) On December 9, 2011 and December 12, 2011, I met with Council President Briscoe and City Attorney King at City Attorney King's office in Ketchum, Idaho and reviewed Investigator Ball's Written Investigation Report related to the disciplinary investigation. Attached are the relevant pages of City Attorney King's billings for the period that confirms the December 9, 2011 and December 12, 2011 meetings to review the Written Investigation Report and that the Written Investigation Report was considered final as of that time. As the matters in the Written Investigation Report

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included sensitive personnel issues, I directed that the Written Investigation Report would only be able to be reviewed by current Sun Valley City Council members, and no one else, and only at City Attorney King's office.

23) After reviewing the Written Investigation Report related to the issues associated with Former Administrator Hammer, and in performing my own investigation, I determined that the Written Investigation Report was flawed and that none of the allegations against Former Administrator Hammer that had been raised by either Former Treasurer Frostenson or Council Member Ribí, or had been investigated by Investigator Ball, required any further disciplinary investigation or disciplinary actions against Former Administrator Hammer, because each allegation was covered by some specific authorization that I had provided Former Administrator Hammer as was allowed pursuant to Former Administrator Hammer's written employment agreement with the City Of Sun Valley.

24) After the presentation of the Written Investigation Report by Investigator Ball, I concluded that the Written Investigation Report was final as to all matters related to the allegations associated with Former Administrator Hammer. I thereafter gave Former Administrator Hammer notice that she had been exonerated of any disciplinary claims and considered the matters concluded related to Former Administrator Hammer.

25) After reviewing the Written Investigation Report related to the issues associated with Council Member Ribí, I determined that the findings of Investigator Ball

were fatally flawed, as Investigator Ball had not interviewed several individuals I directed Investigator Ball to interview related to Council Member Ribi's history of misconduct, including Council Member Lamb, and that the claims of several individuals related to Council Member Ribi's misconduct, including by former Sun Valley City Clerk Kelly Ek and Former Treasurer Frostenson, directly contradicted statements and complaints about Council Member Ribi's misconduct that had been made directly to me over the course of the prior three years. I concluded that Investigation Ball's findings in the Written Investigation Report were not credible, and had been influenced by Attorney Naylor's control of the disciplinary investigation process through his improper communications with Investigator Ball.


26) After reviewing the Written Investigation Report related to issues associated with other City Of Sun Valley employees, I concluded that Investigator Ball's findings were not credible, as many of them directly contradicted my own personal knowledge of City Of Sun Valley operations during the prior three years, and because many of Investigator Ball's conclusions were based on only a cursory investigation and mostly hearsay information.

27) After Investigator Ball presented the Written Investigation Report that I reviewed at City Attorney King's office on December 9, 2011, I considered Investigator Ball to have concluded any and all work she had been assigned to perform on behalf of the City Of Sun Valley.

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28) Since January 4, 2012, when I was replaced as Mayor Of Sun Valley by DeWayne Briscoe, I have not been provided with any additional information related to what, if anything, the City Of Sun Valley thereafter retained Investigator Ball to perform on behalf of the City Of Sun Valley.

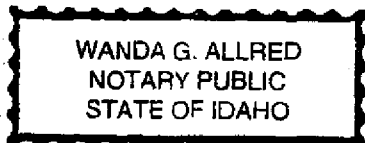
Further Affiant sayeth not.


Wayne Willich

Subscribed To And Sworn Before
Me This 5th Day Of November
2012.


Notary Public

NOTARY Expires 8/2/2016



DEC 12 2012

James R. Donoval, Pro Se (ISBA No. 8142)
4110 Eaton Ave., Suite D
Caldwell, ID 83607
(312) 859-2029
Idaho Atty No. 8142
jdonoval@aol.com

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,)	
Plaintiff (Dismissed) - CounterDefendant,)	
)	
PATRICIA BROLIN-RIBI,)	
Plaintiff,)	
)	
v.)	No. CV-2011-1040
)	
JAMES R. DONOVAL)	
Defendant-CounterPlaintiff,)	

SUPPLEMENTAL AFFIDAVIT OF WAYNE WILlich
FORMER MAYOR OF THE CITY OF SUN VALLEY

I, WAYNE WILlich, first duly sworn on oath, depose and state as follows:

1) My name is Wayne Willich, and from the first week of January of 2008 to January 3, 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2) On or about December 4, 2012, the Idaho Mountain Express posted on its on-line version, a document purporting to be a report issued by Investigator Patti Ball dated December 20, 2011 (the "Questionable Patti Ball Report") (Exhibit A), which was

TABLE OF CONTENTS

Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel CONT.	12/10/2013	684
Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	12/10/2013	708
Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	12/10/2013	716
Reply in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	12/13/2013	718
Supplemental Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	12/13/2013	728
Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion to Compel	12/13/2013	735
Defendants' Opposition to Plaintiff's Motion for Reconsideration	1/14/2014	739
Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	1/16/2014	758
Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	1/31/2014	765
Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley In Support of Motion to Reconsider Denial of Motion to Compel	1/31/2014	769
Memorandum in Support of Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	2/14/2014	778
Memorandum Decision Denying Motion to Reconsider	2/18/2014	793
Memorandum Decision Denying Motion to Amend	2/18/2014	796
Defendant's Opposition to Plaintiff's Motion for Reconsideration to Deny Plaintiff's Motion to Compel	4/07/2014	799
Memorandum Decision Denying Motion to Reconsider	5/16/2014	809
Declaration of Susan Robertson	11/18/2014	819
Memorandum in Support of Sun Valley's Motion for Summary Judgment	11/18/2014	830
Sun Valley's Motion for Summary Judgment	11/18/2014	858
Declaration of Kirtlan G. Naylor (<i>NOTE: EXH A & B not filed in the District Court</i>)	11/18/2014	860

INDEX

Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel CONT.	12/10/2013	684
Declaration of Kirtlan G. Naylor (<i>NOTE: EXH A & B not filed in the District Court</i>)	11/18/2014	860
Declaration of Susan Robertson	11/18/2014	819
Defendant's Opposition to Plaintiff's Motion for Reconsideration to Deny Plaintiff's Motion to Compel	4/07/2014	799
Defendants' Opposition to Plaintiff's Motion for Reconsideration	1/14/2014	739
Memorandum Decision Denying Motion to Amend	2/18/2014	796
Memorandum Decision Denying Motion to Reconsider	2/18/2014	793
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Memorandum in Support of Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	2/14/2014	778
Memorandum in Support of Sun Valley's Motion for Summary Judgment	11/18/2014	830
Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	12/10/2013	716
Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	1/31/2014	765
Reply in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	12/13/2013	718
Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	1/16/2014	758
Sun Valley's Motion for Summary Judgment	11/18/2014	858
Supplemental Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	12/13/2013	728
Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion to Compel	12/13/2013	735
Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Reconsider Denial of Motion to Compel	1/31/2014	769

purportedly prepared prior to the termination of my administration as Mayor Of Sun Valley on January 3, 2012.

3) I certify that prior to my viewing of the Questionable Patti Ball Report on or about December 4, 2012, that I never was provided a copy of the Questionable Patti Ball Report, including specifically that I was never provided a copy of the Questionable Patti Ball Report prior to the termination of my tenure as Mayor Of Sun Valley on January 3, 2012

4) I certify that on December 12, 2012 and December 13, 2012, I was provided a copy of a report (the "Final Patti Ball Report") prepared by Investigator Ball that significantly differs from the Questionable Patti Ball Report in that the Final Patti Ball Report included factual allegations and findings about misconduct of Sun Valley City Council Member Nils Ribi which are missing from the Questionable Patti Ball Report.

5) I certify that the Final Patti Ball Report also significantly differs from the Questionable Patti Ball Report in that the Final Patti Ball Report asserted multiple facts and made multiple conclusions about the conduct of Sharon R. Hammer that differ from the facts and conclusions about the conduct of Sharon R. Hammer now found in the Questionable Patti Ball Report.

6) I certify that in many sections of the Final Patti Ball Report that Investigator Ball had made factually incorrect statements, and had made several clearly incorrect

findings and conclusion, based on hearsay, doubtful and dubious statements of individuals that had been interviewed by Investigator Ball related to allegations of misconduct against Ms. Hammer.

7) I certify that in many sections of the Final Patti Ball Report that Investigator Ball made factually incorrect statements, and made several clearly incorrect findings and conclusion, based on hearsay, doubtful and dubious statements of individuals that had been interviewed by Investigator Ball related to allegations of harassment, hostility and other misconduct against Council Member Ribi, and that Investigator Ball had woefully failed to make a concerted effort to investigate the serious allegations of harassment and hostile work environment that had been alleged against Council Member Ribi by Ms. Hammer

8) I certify that as of December 13, 2011, I considered the Final Patti Ball Report to be the final work product requested of Investigator Ball, and indicated to Investigator Ball that her services to Sun Valley were completed.

9) I have reviewed the December 2011 invoices of Investigator Ball (Investigator B) and Sun Valley City Attorney Adam King (Exhibit C). The invoice of Investigator Ball (Exhibit B) confirms that on December 12, 2011 and December 13, 2011 that Investigator Ball presented to me a singular report, which was the Final Patti Ball Report. The invoice of City Attorney King (Exhibit C) confirms that as of December 13, 2011 the Final Patti Ball Report was a singular report and was "final".

10) Based on the Final Patti Ball Report, and my authority to make final and binding disciplinary findings pursuant Section 8.7 of the Sun Valley Personnel Policy And Procedures, I concluded that Ms. Hammer had not committed any infractions of Sun Valley policies related to a) her use of a Sun Valley automobile because I had authorized her to use the automobile at all hours for both Sun Valley and personal use, b) her use of flex time to compensate her for non-standard work hours she had been required to work over the course of 2008 through 2011 because I had authorized her to use the flex time, and, c) her use of a Sun Valley credit card because Sun Valley Treasurer Michelle Frostenson and the Sun Valley City Council had already specifically approved as legitimate all expenditures Ms. Hammer had incurred on the Sun Valley credit card.

11) Based on my findings related to allegations of misconduct against Ms. Hammer, and my authority pursuant to Section 8.7 of the Sun Valley Personnel Policies, I considered all disciplinary actions against Ms. Hammer to be concluded as of December 13, 2011.

12) Based on the Final Patti Ball Report and my own knowledge of Ms. Hammer's multiple complaints and my knowledge of Council Member Ribi's conduct towards Ms. Hammer during 2009 through 2011, and my authority to make final and binding disciplinary findings pursuant Section 8.7 of the Sun Valley Personnel Policy And Procedures, I concluded that Council Member Ribi had violated the Sun Valley Personnel Policy on Harassment (Section 7.5) related to his treatment of Ms. Hammer on

multiple occasions over the course of 2009 through 2011, including that Council Member Ribi had assaulted Ms. Hammer during a break in a Sun Valley City Council meeting on September 15, 2011.

13) I certify that between December 13, 2012 until my tenure as Mayor Of Sun Valley terminated on January 3, 2012, I gave Investigator Ball no authority to contact attorney Kirtlan Naylor, to discuss the issues associated with the investigation which resulted in the Final Patti Ball Report or to take any direction of any sort from Attorney Naylor.

14) I certify that between December 13, 2011 and the termination of my tenure as Mayor Of Sun Valley on January 3, 2012, I gave Investigator Ball no authority or no direction to modify the Final Patti Ball Report in any fashion or to prepare any additional or supplemental reports for Sun Valley related to the disciplinary investigation she had been retained to perform on behalf of Sun Valley.

15) I have reviewed the December of 2011 invoice of Investigator Ball (Exhibit B) which indicates that in direct violation of my authority and without my knowledge or approval, between December 15, 2011 and December 20, 2011, Investigator Ball surreptitiously communicated with Attorney Naylor and apparently prepared the Questionable Patti Ball Report at Attorney Naylor's direction without my authority, knowledge or direction, and dated the Questionable Patti Ball Report on December 20.

2011 to fraudulently assert that it had been completed during my tenure with my knowledge as Mayor Of Sun Valley when it had not.

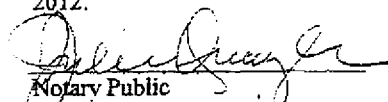
16) I certify, that the Final Patti Ball Report did not include the language that appears on the Questionable Patti Ball Report claiming that "This Document Is Protected By Attorney Work Product Privilege", as at no time was Investigator Ball retained by Sun Valley during my tenure as Mayor Of Sun Valley to perform any legal work or to prepare her report in regards to pending litigation, as Investigator Ball was retained solely to perform an internal Sun Valley disciplinary investigation.

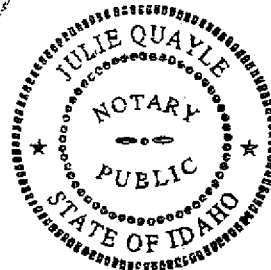
17) At no time during my tenure as Mayor Of Sun Valley through January 3, 2012, did I authorize or seek that the Blaine County Prosecutor institute a criminal investigation of either Ms. Hammer, Sun Valley Fire Chief Jeff Carnes or any other Sun Valley employee, nor did I provide Attorney Naylor with any authority to do so without my specific approval, which Attorney Naylor never obtained.

Further Affiant sayeth not.

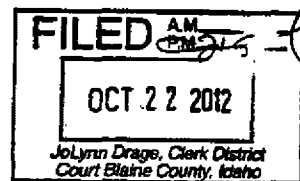

Wayne Willich

Subscribed To And Sworn Before
Me This 7th Day Of December
2012.


Notary Public
My commission
Expires 11-1-2017



OCT 25 2012



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

Nils Ribi,
Plaintiff/Counterdefendant

and Patricia Brolin-Ribi,
Plaintiff,

v.

James R. Donoval,

Defendant/Counterclaimant.

CASE NO. CV 2011-1040

MEMORANDUM DECISION GRANTING NON-PARTY CITY OF SUN VALLEY'S
MOTION TO QUASH SUBPOENA

MEMORANDUM DECISION GRANTING MOTION TO QUASH

Page 1 of 7

The City of Sun Valley ("Sun Valley"), a non-party to this matter filed a Motion to Quash Subpoena pursuant to I.R.C.P. 45(d) concerning a subpoena issued by the Defendant/Counterclaimant, James Donoval to Patricia Ball, an investigator hired by Sun Valley. Oral argument was heard on this matter on September 18, 2012. Because this Court finds that the materials sought in the subpoena are protected by the work product doctrine, Sun Valley's Motion to Quash Subpoena is granted.

FACTS AND BACKGROUND

This case was initiated on December 30, 2011, when the Plaintiffs filed a complaint against Mr. Donoval. The lawsuit was filed seeking redress for allegedly defamatory and emotionally distressful statements made by Mr. Donoval in a series of written communications with members of the Sun Valley government and Ms. Brolin-Ribi in November 2011. There were three letters sent by Mr. Donoval to the mayor and members of the Sun Valley City Council between November 12, 2011 and November 17, 2011. All three of these letters either explicitly or implicitly threatened litigation against Sun Valley or members of its government. On November 21, 2011, Mr. Donoval, on behalf of Sharon Hammer, filed a lawsuit against Sun Valley and members of its government.

On November 17, 2011, Adam King, the Sun Valley City Attorney, contacted Ms. Ball about the possibility of retaining her services for a fact-finding investigation regarding various allegations that could be the subject of litigation. On November 21, 2011, Sun Valley retained Ms. Ball for the purpose of conducting an investigation into alleged violations of City policy. On November 22, 2011, Kirtlan Naylor was assigned by Sun Valley's insurance carrier to provide legal defense to Sun Valley, and Mr. Naylor was to appointed as Ms. Ball's primary legal contact on November 28, 2011. The scope of Ms. Ball's investigation included allegations concerning

violation of city policy made against Ms. Hammer, as well as allegations made by Ms. Hammer against Nils Ribi in her November 21, 2011 lawsuit. In conducting this investigation, Ms. Ball interviewed witnesses, reviewed information, and drafted a report. This report was concluded on December 20, 2011. Portions of this report were later provided to the Blaine County Prosecutor for review as to any criminal conduct.

On July 22, 2012, Ms. Ball was served a subpoena by Mr. Donoval commanding Ms. Ball to produce all audio tapes of interviews, documents, communications, agreements, and reports obtained or produced in connection with Ms. Ball's investigation for Sun Valley. Ms. Ball informed Sun Valley of the subpoena, and Sun Valley filed the current motion to quash.

LEGAL STANDARD

A court has the discretion to quash or modify a subpoena if the subpoena is "unreasonable, oppressive, fails to allow time for compliance, [or] requires disclosure of privileged or other protected matter and no exception or waiver applies." I.R.C.P. 45(d). When a court has discretion, it must not abuse that discretion. A court does not abuse its discretion when: (1) it correctly perceives the issue as one of discretion; (2) acts within the boundaries of such discretion and consistently with the legal standards applicable to the specific choices before it; and (3) reaches its decision by an exercise of reason. *Clark v. Klein*, 137 Idaho 154, 156, 45 P.3d 810, 812 (2001).

DISCUSSION

Sun Valley argues that the subpoena issued to Ms. Ball should be quashed because: (1) the subpoena is facially invalid; (2) the subpoena seeks protected work product, and; (3) the subpoena seeks material protected by the attorney-client privilege. The subpoena issued by Mr. Donoval to Ms. Ball is facially invalid. That deficiency, however, can be cured. Therefore, this

Court will consider whether the information sought by the subpoena is protected by either the work product doctrine or the attorney-client privilege.

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation "by or for another party or by or for that other party's representative...only upon a showing that the party seeking discovery has substantial need of the materials...and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." I.R.C.P. 26(b)(3). If discovery of such material is ordered, "the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

There is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. Aff. Ball, ¶ 3; Aff. King, ¶ 11. Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation. Aff. Ball, ¶¶ 3,5,6,10; Aff. King, ¶¶ 11,15,18. Therefore, the report Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation. Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party's representative.

Mr. Donoval correctly points out that underlying facts are not protected by the work product doctrine. *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). However, the doctrine does protect disclosure of communications. *Id.* "Communications" are precisely what Mr. Donoval seeks in his subpoena. Donoval Subpoena at 2. Mr. Donoval is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. He is not entitled to copies, however recorded, of Ms. Ball's interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball's duty as an investigator. He can obtain the underlying facts obtained by Ms. Ball in these interviews through other discovery methods.

It is possible under certain circumstances to waive the work product doctrine. If work product is disclosed, and that disclosure is to an adversary, the protection is lost. *Trustees of Elec. Workers No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1, 14-15 (D.C. Cir. 2010) (citations omitted). In this case, part of Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries. *See U.S. v. AT&T*, 642 F.2d 1285, 1300 (D.C. Cir. 1980) (MCI's disclosure of work product to the government, for the purpose of aiding in the investigation of MCI's opponent did not waive work product immunity). "While the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself [to waive protection of work product]." *Id.* at 1299. Since there has been no showing that Sun Valley disclosed its work product to an adversary, it has not waived protection of its work product.

Mr. Donoval has not shown that he cannot obtain the underlying facts through depositions, interrogatories, requests for production, or other discovery methods, he has shown neither a substantial need for Ms. Ball's materials, nor an undue hardship in attaining the substantial equivalent of these materials by other means. Moreover, he has not shown that Sun Valley has waived work product protection. Because Mr. Donoval has not met this burden under L.R.C.P. 26(b)(3), and this Court finds that Ms. Ball was retained in anticipation of litigation, and the materials she prepared were prepared in anticipation of litigation, those materials are protected. Because of this, there is no need to analyze whether those materials are protected from disclosure under the attorney-client privilege.

CONCLUSION

For the foregoing reasons, the City of Sun Valley's MOTION TO QUASH SUBPOENA is hereby GRANTED.

IT IS SO ORDERED

Dated: 10/17/12

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

24 I, Crystal Rigby, Deputy Clerk for the County of Minidoka, do hereby certify that on the day of October, 2012, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION GRANTING NON-PARTY CITY OF SUN VALLEY'S MOTION TO QUASH SUBPOENA to each of the persons as listed below:

Kirtlan Naylort
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353

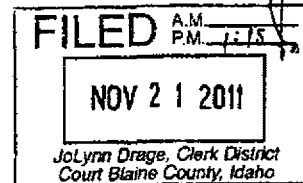
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

CLERK OF THE DISTRICT COURT

BY:


Crystal Rigby
Deputy Clerk

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,
Plaintiff,

v.

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation; and,
ADAM KING, an individual,
relief only),
Defendants.

No. CV 2011-928

ROBERT J. ELGEE

**VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT**

NOW COMES the Plaintiff, SHARON R. HAMMER, and in support of her Verified
Complaint states as follows:

1) Plaintiff Sharon R. Hammer ("Ms. Hammer") is a resident of Sun Valley, Blaine County, Idaho. In May of 2008, pursuant to a written City Administrator Employment Agreement, Ms. Hammer was hired as the City Administrator Of Defendant The City Of Sun Valley, in Blaine County, Idaho ("Sun Valley") and (the "City Administrator"). The written City Administrator Employment Agreement has been amended and extended from time to time and is effective through at least May 31, 2012. In 1990, Ms. Hammer graduated with a Juris Doctor degree from Southern Illinois University Law School and was licensed in Illinois. In 1991, Ms. Hammer also received her law license in Tennessee. For several years Ms. Hammer practiced as a prosecuting attorney for Perry, County, Illinois and as the City

City Attorney King provided legal advice to both Mayor Willich and Ms. Hammer as to how to discipline Mr. Ribí for such harassment and assault (i.e. nothing can be done to Mr. Ribí), and even after multiple demands by Ms. Hammer's counsel that Mr. King cease participating in any matters related to Ms. Hammer or the Special Investigation. On information and belief, City Attorney King's motivation in himself seeking to terminate Ms. Hammer and in assisting Mr. Ribí in the termination of Ms. Hammer, is to increase the amount of work and fees that he would generate should Ms. Hammer be removed as the City Administrator.

41) Idaho Statute 6-2015 provides for damages to any employee, as well as allowing for injunctive relief, against the municipality or its officials and employees who have violated the provisions of the Idaho Protection Of Public Employees Act by taking any adverse action against an employee for any of the reasons previously cited in Idaho Statute 6-2104.

42) At all times herein, Mr. Ribí was acting both individually and in his role as an elected official of Sun Valley. At all times herein, City Attorney King was acting both individually and in his role as the Sun Valley City Attorney.

43) The act of Sun Valley investigation Ms. Hammer of any infractions of any type, after Ms. Hammer had provided notice of Mr. Ribí's harassment and assault of Ms. Hammer and Mr. Ribí's other violations of the Sun Valley Policies And Procedures, including City Attorney Kings overt and covert acts, is an "adverse action" as that phrase is described in section 6-2104 of the Idaho Protection Of Public Employees Act.

46) Ms. Hammer has been damaged by the adverse actions of Mr. Ribí, City Attorney King and Sun Valley in investigating Ms. Hammer and by placing Ms. Hammer on administrative leave, even with pay, by the mere insinuation that Ms. Hammer is guilty of something that has not even been disclosed to her. Considering Ms. Hammer's long history of outstanding public service described herein, and Ms. Hammer having been just recently recognized for her preparation of the Sun Valley Budget for 2011 and the Sun Valley Comprehensive Financial Report for 2010 (see Exhibit A and Exhibit B), any insinuation that Ms. Hammer is in any way guilty of anything will ruin her professional reputation and her standing in the community, potentially permanently.

47) In addition, Mr. Ribí's long history of harassment, abuse and assault of Ms. Hammer, the adverse actions taken by Mr. Ribí, City Attorney King and Sun Valley described herein in response to Ms. Hammer's complaints of harassment, abuse, assault and violations of Sun Valley Policies And Procedures against Mr. Ribí, and the negative impact of being investigated and placed on administrative leave for no known reason, have caused Ms. Hammer physical, medical and emotional injuries which have been previously documented to her personal physician and her counselor/therapist and which continue.

48) There has been absolutely no explanation made to Ms. Hammer, or any rational reason, for why Ms. Hammer has been placed on administrative leave as to her voluntary role as a Sun Valley firefighter and EMT, as has been ordered in the Administrative Leave Order.

WHEREFORE, Plaintiff Sharon R. Hammer prays that this Honorable Court enter judgment as follows:

a) Judgment in Ms. Hammer's favor and against Defendants Nils Ribi, Adam King and the City Of Sun Valley, jointly and individually, in the sum of One Million Dollars (\$1,000,000.00) or such other amount as shall be determined at trial for Nils Ribi's, Adam King's and the City Of Sun Valley's violation of the Idaho Protection Of Public Employees Act (6-2101 et seq.) in seeking to, and actually taking, adverse action against Ms. Hammer in investigating Ms. Hammer, in attempting to force her resignation as the Sun Valley City Administrator, and in putting her on administrative leave;

b) For an injunctive order requiring that the City Of Sun Valley fully reinstate Ms. Hammer to active duty status immediately due to the City Of Sun Valley failing to provide Ms. Hammer with any notice or other indication of what charges have been asserted against her requiring her to be placed on such administrative leave by the City Of Sun Valley;

c) For an order immediately allowing Ms. Hammer to continue her role as a volunteer Sun Valley firefighter and EMT;

d) Enter an injunctive order prohibiting Defendant Adam King from acting as legal counsel to the City Of Sun Valley, Mayor Wayne Willich, Mayor-Elect DeWayne Briscoe, the Sun Valley City Council, or any Sun Valley employee in any way in regards to any issue related to either Ms. Hammer or the Special Investigation ordered by the Sun Valley City Council on Monday, November 14, 2011, due to his previous legal advice to Ms. Hammer and due to his obvious conflict of interest in regards to any matters related to Ms. Hammer and her harassment and assault claims against Mr. Ribi;

e) Enter an injunctive order prohibiting Defendant Nils Ribi from contacting or discussing any Sun Valley matters with any Sun Valley employees or with City Attorney King, and in particular Ms. Hammer, other than Mayor Willich, Mayor Elect Briscoe or other

current or about to be seated members of the Sun Valley City Council, and to fully cooperate with the pending Special Investigation.


f) For an order requiring that the City Of Sun Valley cease and desist with any further investigation of Ms. Hammer or any acts of Ms. Hammer, including in regards to the Special Investigation, without first providing in camera notice to the Court of the specific reasons for the need for such an investigation and without first obtaining specific Court approval to commence and/or continue such investigation;

g) For an order prohibiting any Sun Valley City Council member or employee, and in particular City Attorney Adam King, from disclosing any matters which were, or will be, discussed in any Executive Session of the Sun Valley City Council related to either Ms. Hammer or the Special Investigation, without further order of Court after an in camera request;

h) For costs and attorney's fees as are allowed by law, and,

i) For such other relief as this Honorable Court finds to be just, equitable and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL TRIABLE MATTERS AND FOR ENTRY OF ALLOWABLE EQUITABLE RELIEF BY THE COURT


Respectfully Submitted
James R. Donoval
Attorney For Sharon R. Hammer

James R. Donoval, Pro Se
P.O. Box 1499
Sun Valley, ID 83353
(312) 859-2029
Idaho Atty No. 8142

RECEIVED

JAN 19 REC'D

FILED	A.M. _____
	P.M. _____
JAN 17 2012	
JoLynn Drage, Clerk District Court Blaine County, Idaho	

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

NILS RIBI,
Plaintiff-Counter-Defendant,

PATTI BROLIN-RIBI,
Plaintiff,

v.

JAMES R. DONOVAL
Defendant-CounterPlaintiff-Third Party
Plaintiff,

v.

R. KEITH ROARK,
Third Party Defendant.

No. CV-2011-1040

AFFIDAVIT OF JAMES R. DONOVAL
(Matters Verse Nils Ribi)

I, JAMES R. DONOVAL, first duly sworn on oath, depose and state as follows:

1) That my name is James R. Donoval, that I am the Defendant-CounterPlaintiff-Third Party Plaintiff herein, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required. I also certify that all of the documents attached herein are true and accurate copies of correspondences I sent to the various parties or received myself, that the documents I prepared were served or otherwise

1/20 PM

delivered to only the recipients described herein or have been made part of pleadings filed in pending litigation.

3) Over the course of the last three years, I have had multiple conversations with individuals about their concerns about Defendant Sun Valley City Council Member Nils Ribi's emotional stability, including with Sharon R. Hammer, who is the Sun Valley City Administrator, and, who is also my wife. During that period, on numerous occasions, I have had the opportunity to personally witness Mr. Ribi in action as a Sun Valley City Council Member and at other public and private functions. Prior to mid year 2010, I also held multiple personal conversations with Mr. Ribi in which I was able to personally measure his character, his temperament and his emotional stability.

4) Over the course of the last three years, I held multiple conversations with Ms. Hammer in which she disclosed to me multiple instances of Mr. Ribi harassing her, and being hostile towards her, in her duties as the Sun Valley City Administrator, and in which she expressed her concerns that Mr. Ribi was potentially unstable and dangerous to at least her, as well as potentially other City Of Sun Valley employees.

5) Over the course of the last three years I have been advised by individuals who have known Mr. Ribi for an extended period of time that Mr. Ribi has taken medication for both migraine headaches and for dental problems, and that potentially those medications cause his temperament and conduct to be varied and unstable.

6) In late November of 2011, I had a personal conversation with former Sun Valley Mayor Jon Thorson who told me that when Virginia Egger was the Sun Valley City Administrator, that Mr. Ribi had multiple arguments with Ms. Egger, and that Mayor Thorson directed Mr. Ribi to seek counseling with Ms. Egger, which the City Of Sun Valley paid for, to treat Mr. Ribi's anger and hostility issues, at least with Ms. Egger. Prior to my call with former Mayor Thorson, several individuals related to the City Of Sun Valley had also disclosed to me the hostility that Mr. Ribi had shown towards Ms. Egger.

7) In early December, I had a personal phone conversation with William Sperling, who was Mr. Ribi's former next door neighbor in Sun Valley. Mr. Sperling told me that between 2001 and 2005 that Mr. Ribi had harassed his wife on multiple occasions to the point that Ms. Sperling lodged harassment complaints with the City Of Sun Valley Police Department. Mr. Sperling told me that the predominant reason that they moved away from Sun Valley was to get away from Mr. Ribi. Prior to my call with Mr. Sperling, several individuals related to the City Of Sun Valley had also disclosed to me that Mr. Ribi had harassed Ms. Sperling.

8) On November 12, 2011, or thereabouts, I drafted the letter attached as Exhibit A of the Complaint herein (the "First Litigation Notice Letter"), and served the First Litigation Notice Letter on Sun Valley Mayor Wayne Willich, Sun Valley City Council Members Joan Lamb, DeWayne Briscoe, Nils Ribi, Robert Youngman, and City Council Members Elect Franz Suhadolnik and Michelle Griffith (hereinafter defined as the "Controlled Notice Group"). The First Litigation Notice Letter was clearly marked "STRICTLY CONFIDENTIAL, Not For Public Distribution, In Contemplation Of Litigation". I certify

that the purpose of the First Litigation Notice Letter was to notify the Controlled Notice Group of potential litigation arising out of actions that had been taken against my client Sharon R. Hammer. I certify that I intended that no persons other than the Controlled Notice Group obtain or see the First Litigation Notice Letter. I certify that, except for including the First Litigation Letter in filings in the pleadings in the Hammer v. Ribi matter, I personally allowed no one other than the Controlled Notice Group to obtain or see the First Litigation Notice Letter.

9) On November 16, 2011, or thereabouts, I drafted the letter attached as Exhibit B of the Complaint herein (the "Second Litigation Notice Letter"), and attached to the Second Litigation Notice Letter the draft Verified Complaint attached as Exhibit C of the Complaint herein (the "Draft Complaint"), and served the Second Litigation Notice Letter and the Draft Complaint on the Controlled Notice Group. The Second Litigation Notice Letter and the Draft Complaint was clearly marked "STRICTLY CONFIDENTIAL, Not For Public Distribution, In Contemplation Of Litigation". I certify that the purpose of the Second Litigation Notice Letter and the Draft Complaint was to notify the Controlled Notice Group of potential litigation arising out of actions that had been taken against my client Sharon R. Hammer. I certify that I intended that no persons other than the Controlled Notice Group obtain or see the Second Litigation Notice Letter or the Draft Complaint. I certify that, except for including the Second Litigation Notice Letter in filings in the pleadings in the Hammer v. Ribi matter, I personally allowed no one other than the Controlled Notice Group to obtain or see the Second Litigation Notice Letter. I certify that I personally allowed no one other than the Controlled Notice Group to obtain or see the Draft Complaint.

10) Between November 12, 2011 and November 16, 2011, when I issued the First Litigation Notice Letter, the Second Litigation Notice Letter and the Draft Complaint to the Controlled Notice Group, based on my personal observations of Mr. Ribí, my multiple conversations with Ms. Hammer and my multiple conversations with individuals associated with the City Of Sun Valley, I held a sincere personal belief that Mr. Ribí was emotionally unstable and potentially seriously medically or emotionally ill, and that he was a potential danger to Ms. Hammer and other City Of Sun Valley employees.

11) On November 12, 2011 and November 16, 2011, when I issued the First Litigation Notice Letter, the Second Litigation Notice Letter and the Draft Complaint to the Controlled Notice Group, I did not do so with any malice towards Mr. Ribí, but did so to a) provide notice to the City Of Sun Valley of potential legal claims Ms. Hammer had against the City Of Sun Valley and Mr. Ribí, and b) with the sincere belief that the City Of Sun Valley should be made aware of the potential that Mr. Ribí was emotionally unstable and potentially seriously ill, and that he was a potential danger to Ms. Hammer and other City Of Sun Valley employees.

12) On November 21, 2011, on behalf of Ms. Hammer, I filed a Verified Complaint against Sun Valley City Council Member Nils Ribí, the City Of Sun Valley and Sun Valley City Attorney pursuant to the Idaho Protection Of Public Employees Act (Idaho Statutes 6-2010 et. seq.) (the "IPPEA") in Blaine County, Idaho (*Hammer v. Ribí et al.*, No. CV-2011-928). The allegations in the Verified Complaint in the *Hammer v. Ribí* action were limited to the issues related to the IPPEA. The remaining claims in the Draft Complaint provided to the Controlled Notice Group were not filed as part of the *Hammer v. Ribí* case as Ms. Hammer's

tort claims in the Draft Complaint are subject to a waiting period under the provisions of the Idaho Tort Immunity Act (Idaho Statute 6-906 - 6-910).

13) On or about November 28, 2011, I obtained a copy of the letter from R. Keith Roark attached as Exhibit D of the Complaint herein (the "First Roark Letter"). I certify that I did not receive a copy of the First Roark Letter either in the U.S. mail or via email. I certify that the first time I saw the First Roark Letter was on or about November 28, 2011 when I received a copy of an Affidavit of Nils Ribi prepared by R. Keith Roark in the Hammer v. Ribi case.

14) On November 30, 2011, I sent the letter attached herein as Exhibit A to R. Keith Roark (the "First Response Letter").

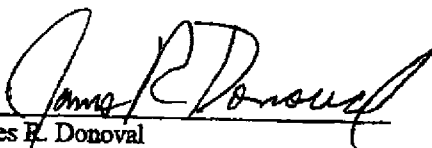
15) On December 6, 2011, I received the email attached as Exhibit B herein from R. Keith Roark (the "Roark Email").

16) On approximately December 18, 2011, I received the letter dated November 16, 2011 attached as Exhibit C herein from R. Keith Roark (the "Second Roark Letter").


17) On approximately December 18, 2011, I received a second letter dated November 16, 2011 attached as Exhibit D from R. Keith Roark (the "Third Roark Letter").

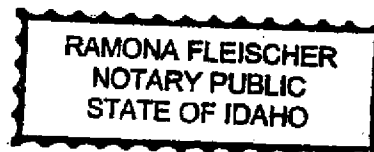
18) On December 22, 2011, I sent the letter attached herein as Exhibit E to R. Keith Roark (the "Second Response Letter").

Further Affiant sayeth not.

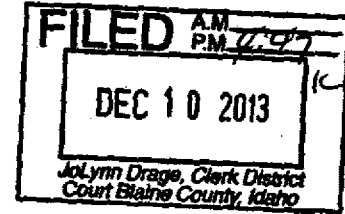

James R. Donoval

Subscribed To And Sworn Before
Me This 17th Day Of JANUARY
2012.


Notary Public



Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR
RECONSIDERATION OF
DEFENDANTS RIBI AND
BRISCOE'S MOTION TO DISMISS

I.

INTRODUCTION

Ms. Hammer respectfully requests that the Court reconsider its finding that an employer's agent cannot be held personally liable under the Idaho Protection of Public Employees Act ("IPPEA"). The Court's November 26, 2013 finding omits language from the statute that addresses what would otherwise be an absolute defense to any violation of the IPPEA. The Court's finding that the IPPEA does not provide for a separate cause of action against Defendants Ribi and Briscoe assumes that all liability arising out of the IPPEA is imputed to an

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF
DEFENDANTS RIBI AND BRISCOE'S MOTION TO DISMISS - 1

employer under the doctrine of *respondeat superior*. Under Idaho law, *respondeat superior* only imputes liability to an employer where the employer's agent's conduct giving rise to liability is conduct within the course and scope of the agent's authority. The Court's ruling does not account for IPPEA violative conduct that falls outside the scope of *respondeat superior* liability.

The intent of the IPPEA is to protect public employees from adverse action. Its purpose would not be served if all an employer needed to do to defeat an IPPEA liability is to claim that an agent's violative conduct falls outside the scope of *respondeat superior* liability. The language omitted from the Court's decision – specifically the remedy against a person – addresses how the IPPEA's intent is preserved when an agent acting on behalf of an employer exceeds their authority and injures a public employee. The IPPEA expressly provides for remedies against agents of the employer in their individual capacity:

6-2105. Remedies for employee bringing action -- Proof required.

(2) An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days after the occurrence of the alleged violation of this chapter.

(3) An action begun under this section may be brought in the district court for ... the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(I.C. § 6-2105(2) and (3); emphasis added.) Further, the remedies available under the IPPEA can be applied to a person. “‘Damages’ means damages for injury or loss caused by each violation of this chapter, and includes court costs and reasonable attorneys’ fees.” (I.C. § 6-2105(1).) “Damages” are regularly applied to suits against “persons” in Idaho as are injunctions (I.C. § 6-2106(1)) and “compensation for lost wages, benefits, or other remuneration” (I.C. § 6-2106(4)).

II.

ARGUMENT

A. The Omitted Statutory Words Must Be Included

Where the language of a statute is plain and unambiguous, a Court must give effect to the statute as written. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685 688 (1999); citation omitted. "Unless the result is palpably absurd, this Court assumes that the legislature meant what is clearly stated in the statute." *Id.* A Court cannot write words out of the statute. "It is a cardinal rule of construction that effect, if possible, must be given to every letter, word, phrase and clause of a statute. Any construction which fails to give effect to the word and letter of the statute, or which would leave any clause as meaningless, or give it an absurd signification, is never admissible whenever any other interpretation is possible." *Ingram v. State Wagon-Road Comm'n*, 4 Idaho 139 (1894). *See also, State v. Urrabazo*, 150 Idaho 158 (2010) ("Indeed, to treat the provision merely as an example essentially reads the words "after a defendant has been placed on probation" out of the statute. Such an interpretation would violate the rule of statutory construction requiring every word in a statute to be given its plain meaning."); *Magnuson v. Idaho State Tax Commission*, 97 Idaho 917, 920, 556 P.2d 1197, 1200 (1976) ("[A]ll sections of the applicable statutes should be considered and construed together to determine the intent of the legislature; and that it is incumbent upon a court to give the statute an interpretation that will not in effect nullify it.") (citations omitted).

By omitting the express remedy against an individual person under the IPPEA, the Court has improperly read out a cause of action provided for in the IPPEA. In doing so based on the assumption that *respondent superior* liability is the only liability under the IPPEA, the Court has also read-into the statute an ultimate defense for employers – employers can say the actor was

not acting within the course and scope and, as a matter of law, the employer is not liable for that agent's conduct. *See, e.g., Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008) ("The actions of an agent are the actions of the corporation. **An agent is only liable for actions which are outside its scope of duty to the corporation.**") (emphasis added) citing *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho*, 123 Idaho 650, 654, 851 P.2d 946, 948 (1993)); *T. W. & L. O. Naylor Co. v. Bowman*, 39 Idaho 764, 230 P. 347 (1924) ("A principal cannot be bound by the acts of an agent done outside of the actual or apparent scope of his authority, unless such acts have been ratified and adopted by the principal.")

The Court's narrow interpretation of the IPPEA severely limits the IPPEA's intent, which is broad protection for public employees. This broad intent should be given broad effect: "The compiled laws establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice." I.C. § 73-102(1). "The Court will interpret [a] statute broadly to effectuate the intent of the legislature." *Elec. Wholesale Supply Co. Inc. v. Nielson*, 136 Idaho 814, 825, 41 P.3d 242, 253 (2001).

B. The Non-Idaho Cases Relied Upon By The Court To Construe The IPPEA Narrowly Should Be Reconsidered

In reaching its ruling on the Motion to Dismiss, the Court appears to have been persuaded by non-Idaho law regarding Title VII in its finding that there is no individual liability under the IPPEA. The Court cited to *Tomka v. Seiler Corp.*, 66 F.3d 1295 (2nd Cir. 1995), but missed the portion of *Tomka* finding individual liable under the New York Human Rights Law which uses the word "person" (in contrast to Title VII, which does not):

the HRL states that it shall be an unlawful discriminatory practice
"for any person to aid, abet, incite, compel or coerce the doing of

any of the acts forbidden under this article, or attempt to do so." ... Based on this language, several courts have ... [held] that a defendant who actually participates in the conduct giving rise to a discrimination claim may be held personally liable under the HRL. In the present case, Tomka has alleged that each of the individual defendants assaulted her and thereby created a hostile working environment. This allegation is sufficient to satisfy § 296(6), and the district court thus incorrectly dismissed Tomka's sexual harassment claims against the individual defendants in their personal capacities under the HRL.

Tomka, 66 F.3d at 1317; citations omitted.

The Court also relied on *Lenhardt v. Basic Institute of Technology*, 55 E.3d 377 (8th Cir. 1995), but *Lenhardt* has been disfavored (see *Cooper v. Albacore Holdings*, 204 S.W.3d 238 (Miss. Ct. App. 2006)). In *Lenhardt*, the Eighth Circuit discussed what it *thought* Missouri courts would determine about the Missouri Human Rights Act related to personal liability. As was noted in *Cooper v. Albacore Holdings*, "with all due respect to the Eighth Circuit, the Missouri Supreme Court does not blindly follow the 'predictions' of the federal courts." *Cooper*, 204 S.W.3d at 243. *Cooper* determined that because the Missouri Human Rights Act refers to the word "person" as to who suits could be brought against (as is the case with the IPPEA), "the MHRA imposes individual liability in the event of discriminatory conduct." *Id.* at 244. In *Genaro v. Central Transport*, 84 Ohio St.3d 293, 703 N.E.2d 782 (Ohio Sup. Ct. 1999), the Ohio Supreme Court also rejected a Title VII analysis of its Ohio anti-discrimination provision and determined that individual liability was imposed under the Ohio anti-discrimination provision based on the use of the phrase "person" in the statute. In contrast to *Tomka*, *Cooper*, *Blazek*, and the IPPEA at issue in the present action, the statute at issue in *Obst v. Microtron*, 588 N.W.2d 550 (Minn. Ct. App. 1999), where individual liability was not found, does not use the word "person."

As discussed in the Title VII section of *Tomka*, a significant portion of the rationale of excluding individual liability under Title VII is Title VII's expressed inapplicability to employers with less than fifteen employees. *Tomka*, 66 F.3d at 1314. The small employer exemption was also used in *E.E.O.C. v. AIC Security*, 55 F.3d 1276 (7th Cir. 1995), *Wathen v. General Electric*, 115 F.3d 400 (6th Cir. 1997), and *Reno v. Baird*, 957 P.2d 1333, 18 Cal. 4th 640 (Cal. Sup. Ct. 1998), all relied upon by this Court. Unlike the statutes being analyzed in these cases, the IPPEA does not have a small employer exemption. The IPPEA applies to all public employers and all of their agents, regardless of the number of employees. The IPPEA also expressly provides for a remedy against an individual:

6-2105. **Remedies** for employee bringing action -- Proof required.

(2) **An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days after the occurrence of the alleged violation of this chapter.**

(3) **An action begun under this section may be brought in the district court for ... the county where the person against whom the civil complaint is filed resides or has his principal place of business.**

(I.C. § 6-2105(2) and (3); emphasis added.)

There was no need to look beyond Idaho Code section 6-2105, as its language is plain and unambiguous. The IPPEA's intent is, expressly, broad. Further, the Legislative History, however scant it may be, supports a reading of the IPPEA that does allow for a cause of action against a person. As the Plaintiff previously cited to the Court, Representative Berain (the sponsor of the IPPEA) testified before the Idaho House Human Rights Committee that the IPPEA also covered the "heads of those agencies" (i.e., Mayor and City Council members),

clearly indicating that the high ranking officials of the agencies at issue would also be subject to the provisions of the IPPEA.

The IPPEA plain language, broad intent, and Legislative History all show why the logic related to the *Lenhardt* discussion on Title VII would not, and cannot, apply in this instance. The *Lenhardt* court stated:

As a practical matter employees who unlawfully discriminate against their fellow employees, and who thereby expose their employer to liability, do not get anything like a "free-pass" to continue their wrongdoing with impunity An employer who is subject to well-founded claims of employment discrimination as a result of an employee's intentional acts of discrimination is not likely to look favorably upon the offending employee. To the contrary, the employer, to protect its own interests and to avoid further liability, almost certainly will impose some form of discipline upon the offending employee. That discipline may include a "free-pass" to the unemployment line, a result that would seem particularly likely if the employee engages in repeated acts of intentional discrimination against fellow employees.

Tomka, 66 F.3d at 381.

This Title VII logic simply cannot apply to the situation that we have in this case. Defendants Briscoe and Ribí are the Mayor and City Council member, respectively. There is no one who can impose discipline on them; nor are they going to impose any discipline themselves. This is just one more reason the IPPEA includes "person" and why Representative Berain assured the Idaho Legislature that the IPPEA would apply to the "heads of those agencies".

III.

CONCLUSION

For the foregoing reasons, Plaintiff Sharon Hammer respectfully requests that this Court reconsider having granted Defendants Ribí and Briscoe's Motion to Dismiss.

DATED this 10th day of December, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ

JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
☒ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

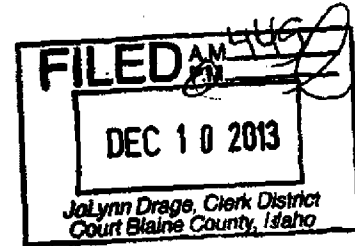
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☒ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ

JOY M. VEGA

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF
DEFENDANTS RIBI AND
BRISCOE'S MOTION TO
DISMISS**

COMES NOW the Plaintiff, Sharon R. Hammer ("Ms. Hammer"), by and through her counsel of record, Jones & Swartz PLLC, and pursuant to Rules 7(b)(1) and 11(a)(2)(B) of the Idaho Rules of Civil Procedure hereby moves this Court to reconsider having granted Defendants Ribi and Briscoe's Motion to Dismiss on the grounds and for the reasons that the Court's current finding omits statutory language, creates a defense to the Idaho Protection of Public Employees Act ("IPPEA") that is inconsistent with the IPPEA language and intent, and that the cases relied upon by the Court in reaching its ruling are not supportive of the Court's ruling.

PLAINTIFF'S MOTION FOR RECONSIDERATION OF DEFENDANTS RIBI AND BRISCOE'S
MOTION TO DISMISS - 1

This Motion is made and supported by the pleadings of record herein and is further supported by the Memorandum filed contemporaneously herewith.

DATED this 10th day of December, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
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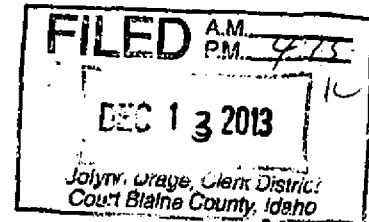
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**REPLY IN SUPPORT OF
 PLAINTIFF'S MOTION TO
 ENFORCE SUBPOENA AGAINST
 NON-PARTY PATRICIA BALL AND
 TO COMPEL THE PRODUCTION OF
 DOCUMENTS WITHHELD FROM
 PRODUCTION IN DISCOVERY AND
 IN RESPONSE TO SUBPOENA**

**A. There Is No Evidence of the Attorney-Client Relationships Necessary
 to Claim the Attorney-Client Privilege and Work Product at Issue**

Ms. Ball and the City of Sun Valley ("City") are opposing Plaintiff's Motion to Compel over 200 documents by asking this Court to infer an attorney-client relationship in order to support the blanket assertion of the attorney-client privilege and attorney work product protections. "As demonstrated by the communications provided in camera to this Court, ... there are multiple instances where Mr. Willich received communications that clearly indicated that Mr. Naylor and Mr. King were participating in the administration of the investigation, and there

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY
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is no evidence of any objection by Mr. Willich.”¹

Obviously, Plaintiff cannot comment of the substance of these emails since they have not been produced. According to the privilege log, however, there were only six (6) emails between Attorney Naylor and Former Mayor Willich. Five (5) of them were from Attorney Naylor, and there is no evidence that any of them were received or read by Former Mayor Willich. There is only one (1) email from Former Mayor Willich to Attorney Naylor, on December 13, 2011 – one day after Former Mayor Willich concluded the Hammer Disciplinary Investigation:

Date	Log Ref.	From	To	cc'd
ON NOVEMBER 23, 2011 THE PATTI BALL RETAINER AGREEMENT WAS SIGNED				
11/24/2011	BALL 1074-1075	Naylor	King, Ball, Willich, Briscoe	
11/25/2011	BALL 1064-1066	Naylor	Willich	Ball, King, Briscoe
11/25/2011	BALL 1067-1069	Naylor	Ball, Willich, King, Briscoe	
11/25/2011	BALL 1072-1073	Naylor	Willich, King, Ball, Briscoe	
11/25/2011	BALL 1160-1163	Naylor	Ball, Willich, King	
ON NOVEMBER 28, 2011 THE HAMMER INVESTIGATION INTERVIEWS BEGIN				
ON DECEMBER 12, 2011 THE HAMMER INVESTIGATION IS CONCLUDED				
12/13/2011	BALL 1044	Willich	Ball, Naylor	King, Briscoe

Even if the December 13, 2011 email states, affirmatively, that Former Mayor Willich was hiring Attorney Naylor, the Hammer Disciplinary Investigation was over. There appear to be no emails before December 13, 2011, that could support an affirmative engagement of

¹ Defendant's Opposition to Plaintiff's Motion to Enforce Subpoena, p. 22. Plaintiff should be able to see these communications if, as the City and Ms. Ball assert, they describe and define the relationship between Attorney Naylor and the City. Such communications are not covered by any attorney-client, work product or common interest privilege. *Nguyen v. Excel Corp.*, 197 F.3d 200 (5th. Cir. 1999) ("Inquiry into the general nature of legal services provided by counsel to a corporate client does not necessitate an assertion of attorney-client privilege"). Only communications that seek or provide legal advice are protected by the attorney-client privilege. *State v. Allen*, 123 Idaho 880, 853 P.2d 625 (Ct. App. 1993).

Attorney Naylor by Former Mayor Willich. "As a general rule, no attorney-client relationship exists absent assent by both the putative client and attorney." *Berry v. McFarland*, 153 Idaho 5, 9, 278 P.3d 407, 411 (2012) (emphasis added). "[W]here the question as to the attorney's authority is raised, his actual authority must be established" *Muncey v. Children's Home Finding and Aid Society of Lewiston*, 84 Idaho 147, 153, 369 P.2d 586, 589 (1962). Just because Attorney Naylor made the Hammer Investigation his business does not mean that Former Mayor Willich's "lack of objection" was assent to convey actual authority to Attorney Naylor to be the City's attorney for the purposes of the Hammer Disciplinary Investigation. Again, there is no evidence that these emails were received or read by Former Mayor Willich. The City's contention that there was an inferred attorney-client relationship via lack of objection also does not square with it and Ms. Ball's argument that unidentified "Sun Valley officials" decided that Attorney Naylor was going to be the legal contact for the purposes of the Hammer Disciplinary Investigation.²

Ms. Ball and the City's reliance on an inferred attorney-client relationship does not satisfy their burden of proving an actual attorney-client relationship and that each and every document being withheld thereunder falls within the scope of any such actual relationship. Nowhere in the hundreds of pages that Ms. Ball and the City submitted to this Court is there proof that Mr. Naylor was hired by the City (Former Mayor Willich or by resolution of the entire City Council) to participate in, guide, or offer legal advice in regard to the Hammer Disciplinary Investigation. Mr. Naylor was insurance defense counsel after the November 21, 2011 IPPEA lawsuit was filed. If Ms. Ball is in possession of what he claims is attorney-client privileged and work product documents -- as her privilege log shows -- Mr. Naylor's decision to share his

² Defendant's Opposition to Plaintiff's Motion to Enforce Subpoena, p. 5.

IPPEA-defense privileged communications and work product with her waived any privilege that might have existed.

The City never had an attorney-client relationship with Ms. Ball. Ms. Ball was not directed to provide legal advice; she does not even assert that she was. She was engaged to conduct a fact-finding investigation. Neither Ms. Ball nor the City's hundreds of pages of documents submitted to this Court show any actual engagement of Ms. Ball for the purposes of providing legal advice incident to the IPPEA lawsuit or the Hammer Disciplinary Investigation. The documents available do show that her engagement was limited to fact-finding and limited to allegations being made about Ms. Hammer's misconduct. There is no evidence of her engagement morphing into providing legal advice about the investigation or the IPPEA lawsuit. The evidence available also shows that Former Mayor Willich and the City do not informally enter into relationships. They use formal engagement letters. There is a complete absence of any such engagement letters to support the relationships that the City and Ms. Ball are asking this Court to infer exist. Without the formation of an attorney-client relationship, there cannot be any privilege or work-product protections to assert.

B. Even If An Attorney-Client Relationship Existed, the City and Ms. Ball Do Not Provide the Privileges Asserted on a Document-By-Document Basis

The City and Ms. Ball ask the Court to assume the existence of attorney-client relationships, assume that the withheld documents fall within the scope of those relationships, assume that the communications are, in fact, because of litigation, and assume that the communications, in fact, include legal advice. Assumptions and inferences are not enough. The burden of showing that information is privileged; and therefore exempt from discovery, is on the party asserting the privilege. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 704, 116 P.3d 27, 34 (2005) (citation omitted). This burden is on a document-by-document basis:

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY
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PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - 4

In sum, a proper analysis as to the withheld documents must be conducted on a document by document basis. If the document would not have been generated 'but for' litigation, it is privileged. However, if it was generated for purposes other than litigation, even though litigation may have been a 'real possibility', it must be disclosed.

United States v. Torf (In re Grand Jury Subpoena), 350 F.3d 1010, 1018 (9th Cir. 2003). The City and Ms. Ball suggest that the "but for" standard should be "because of," but they never undertake any effort to show that each of their over 200 withheld documents actually qualify for privilege protection. "As with the attorney-client privilege, the person asserting the work product privilege cannot make a blanket assertion of the privilege, but must state document-by-document what information the privilege applies." *Buckner v. United States*, 1995 U.S. Dist. LEXIS 14107 (D. Idaho 1995) citing *United States v. Bornstein*, 977 F.2d 112, 115 (4th Cir. 1992).

The City and Ms. Ball's assertion of blanket privileges in this case is particularly problematic in this case. Even if a privilege could be asserted related to the Hammer Disciplinary Investigation, that privilege cannot be extended to communications related to the Hammer Disciplinary Investigation after December 12, 2011. That is when Former Mayor Willich concluded the investigation to be over and further concluded that Ms. Hammer did not engage in any misconduct.³ The City's current attempt to argue that the Hammer Disciplinary Investigation was not finished runs afoul of Idaho Code § 50-208, which provides that Former Mayor Willich controlled the "affairs" of Sun Valley, and Section 8.7 of the Sun Valley Personnel Policies, which confirms that all decisions of Former Mayor Willich related to employee disciplinary matters were "final and binding." Former Mayor Willich was the only City official who could have re-opened the investigation, and he has testified that he did not.

³ Willich Aff., ¶ 53.

Any communications with Investigator Ball after Former Mayor Willich terminated the investigation, until at least until January 3, 2012, when Former Mayor Willich's term as Mayor of Sun Valley ended, cannot be within the scope of any attorney's work on the Hammer Disciplinary Investigation. *Berry v. McFarland*, 153 Idaho 5, 9, 278 P.3d 407, 411 (2012) ("If the attorney agrees to undertake a specific matter, the relationship terminates when that matter has been resolved.").

C. The Hammer Disciplinary Investigation Was to Address Allegations of Ms. Hammer's Alleged Misconduct – Not Because of Threatened Litigation

The City and Ms. Ball's assertion that the Hammer Disciplinary Investigation was because of threatened litigation is not supported by the evidence of record. On November 14, 2011, after Ms. Hammer refused to resign at Council Member Ribb, Council Member Youngman and Current Mayor Briscoe's request, the Sun Valley City Council passed a resolution authorizing Former Mayor Willich to hire an attorney in regards to the Hammer Disciplinary Investigation.⁴ The minutes of the November 14, 2011 Sun Valley City Council meeting do not state that the Sun Valley City Council was going into executive session related to threatened litigation. The minutes state that the Sun Valley City Council was going into executive session "To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employer, staff member or individual agent."⁵ The minutes were later amended to include an "agenda item to discuss hiring an attorney to conduct an independent investigation."⁶ Although the members of the Sun Valley City Council had already received Mr. Donoval's communication of November 12, 2011 by the November 14, 2011 Sun Valley City Council meeting, the Sun Valley City Council gave no indication that

⁴ Ex. K to Supplemental Affidavit of Plaintiff's Counsel.

⁵ *Id.*

⁶ *Id.*

Mr. Donoval's threat of litigation was why the Council was going into executive session on November 14, 2011. Of more importance is that, when the Sun Valley City Council came out of the November 14, 2011 executive session, no mention was made of threatened litigation, and instead the Sun Valley City Council passed a resolution to simply "authorize the Mayor to engage an attorney to conduct an independent investigation."⁷ If the purpose of the hiring of Investigator Ball was in regards to threatened litigation, as is now asserted by the City and Ms. Ball, the Sun Valley City Council minutes would state as much. Instead, the minutes and the subsequent Ball Retainer state that the investigation is to learn whether Ms. Hammer engaged in misconduct. Also, if Ms. Ball was being retained because of litigation, her retainer agreement would have stated as much.

D. The City and Ms. Ball's Response to Waiver is Not Sufficient

The release of any communications that have been asserted to be privileged acts as a waiver for the communication itself (*Skelton v. Spencer*, 98 Idaho 417, 565 P.2d 1374 (1977)), as well as any matter associated with the topic of the communication (*Weil v. Investment/Indicators, Research & Mgt.*, 647 F.2d 18 (9th Cir. 1981)). The waiver also encompasses drafts of the documents or communications. *Loftin v. Bande*, 258 F.R.D. 31 (D.C. Cir. 2009) and *United States v. (Under Seal)*, 748 F.2d 871 (4th Cir. 1984). This Court raised the issue of waiver in *Ribi v. Donoval*, Blaine County Case No. CV-2010-1040, at the time of Mr. Donoval's Motion for Reconsideration.⁸ The Court never ruled on Mr. Donoval's pending Motion to Reconsider because the Court stayed discovery until after ruling on a Motion for Summary Judgment related to Ms. Brolin-Ribi's emotional distress claims against Mr. Donoval, but did ask Attorney Naylor how any privilege was not waived after the Unauthorized Ball Report was released and published

⁷ *Id.*

⁸ Supplemental Affidavit of James Donoval.

in the *Idaho Mountain Express* newspaper.⁹

Ms. Ball and the City do not cite any authority that supports their withholding of communications about the Ball reports after they made the Ball reports public and, apparently, provided them to the Prosecutor.¹⁰ Instead, they argue that they have already produced the materials related to the reports. The City and Ms. Ball's argument begs the questions – what is in the materials that are being withheld and does it fall within the scope of engagement, the scope of a true privilege, and does fairness require that the materials be produced in light of the publication of the Ball reports? The City and Ms. Ball ask the Court to trust them without allowing the Court to verify their statements. The only way to know whether the materials still withheld were otherwise waived is for the Court to review the materials and determine whether fairness requires the same to be produced.

E. Conclusion

For the foregoing reasons, as well as those stated in the Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena, Ms. Hammer respectfully requests that the Court grant her Motion, and:

1. Conduct an *in camera* review of the materials being withheld on grounds of privileges established by the party claiming the same and which are not overcome by the

⁹ Mr. Donoval's Response to Sun Valley's Motion to Quash the Subpoena for Investigator Ball's records in the *Ribi v. Donoval* matter was filed on September 12, 2012, without the benefit of an Affidavit of Former Mayor Willich on the matter. The Court granted Sun Valley's Motion to Quash on October 22, 2012, about a month before the Unauthorized Ball Report was published in the *Idaho Mountain Express* newspaper. Mr. Donoval filed his Motion to Reconsider on November 8, 2012, still prior to the publication of the Unauthorized Ball Report in the *Idaho Mountain Express* newspaper. At the January 15, 2013 hearing on the matter, the Court, on its own, noted that in the intervening days since the filing of the Motion to Reconsider, the Unauthorized Ball Report had been published in the *Idaho Mountain Express* newspaper and questioned Attorney Naylor as to how that did not amount to waiver.

¹⁰ One government agency turning over documents to another government agency waives privileges. *Permian Corp. v. United States*, 665 F.2d 1214 (U.S. D.C. 1981).

arguments herein or at oral argument;

a. Order their production if the Court finds no applicable privilege or a waiver thereof;

b. Order their redacted production to reveal facts, but preserve truly confidential information or attorneys' mental impressions;

2. Compel the production of materials in their entirety that are being withheld on un-established claims of privilege;

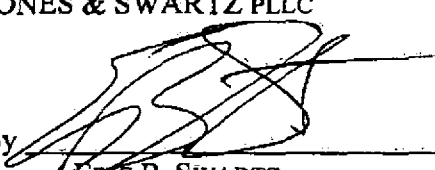
3. Compel the production of materials for which any applicable privilege was waived; and

4. Award Ms. Hammer her attorney fees and costs incurred as a result of having to bring this motion.

DATED this 13th day of December, 2013.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

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☒ Fax: 383-9516
☐ Hand Delivery
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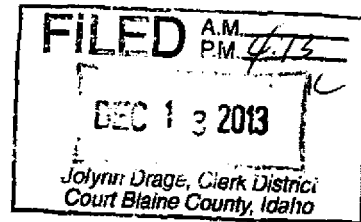
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 joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**SUPPLEMENTAL AFFIDAVIT OF
 COUNSEL IN SUPPORT OF
 PLAINTIFF'S MOTION TO
 ENFORCE SUBPOENA AGAINST
 NON-PARTY PATRICIA BALL AND
 TO COMPEL THE PRODUCTION OF
 DOCUMENTS WITHHELD FROM
 PRODUCTION IN DISCOVERY AND
 IN RESPONSE TO SUBPOENA**

STATE OF IDAHO)

: ss.

County of Ada)


I, ERIC B. SWARTZ, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the state of Idaho.

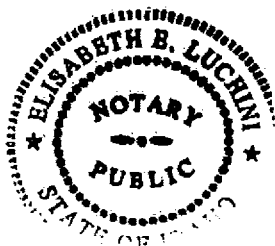
2. Attached hereto as Exhibit K is a true and correct copy of the November 11, 2011 Special Council Meeting Minutes, produced in discovery by Defendant City of Sun Valley.

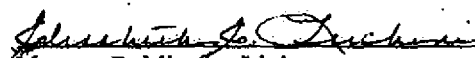
SUPPLEMENTAL AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - 1

FURTHER YOUR AFFIANT SAYETH NAUGHT.


ERIC B. SWARTZ

SUBSCRIBED AND SWORN TO before me this 13th day of December, 2013.




Notary Public for Idaho
My Commission expires 07.13.2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

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The Honorable Jonathan P. Brody
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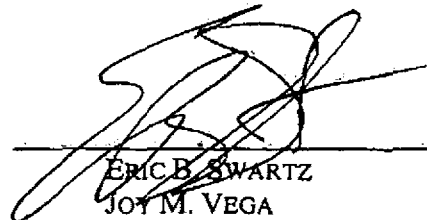

ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT K

**TO SUPPLEMENTAL AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO
ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION
OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA**

EXHIBIT K

**TO SUPPLEMENTAL AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION TO
ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION
OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA**

ORIGINAL

**SPECIAL COUNCIL MEETING MINUTES
OF THE MAYOR AND CITY COUNCIL
IN THE COUNCIL CHAMBERS - 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
NOVEMBER 11, 2011 2:00 P.M.**

The Mayor and the City Council of Sun Valley, Blaine County, State of Idaho, met in a Special Council Meeting in the Sun Valley City Hall Council Chambers on November 11, 2011 2:00 p.m.

**CALL TO ORDER
ROLL CALL**

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

ABSENT: Council member Joan Lamb.

**EXECUTIVE SESSION
MOTION**

Council member Nils Ribi moved to enter into Executive Session pursuant to Idaho Code 67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Executive Session began at 2:10 p.m.
Executive Session ended at 4:45 p.m.

**AMEND AGENDA
MOTION**

Council President Dewayne Briscoe moved to amend the agenda to add an item authorizing the Mayor and City Attorney to have a discussion with a City Employee, seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason to amend the agenda was based on information received by Council in Executive Session.

MOTION

Council member Nils Ribi moved to approve authorizing the Mayor and City attorney to meet with an employee consistent with what was discussed in Executive Session, seconded by Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.

MOTION

Council President Dewayne Briscoe moved to continue the Special Council meeting date certain to Monday November 14th, 2011 at 10:00 a.m., seconded by Council member Bob Youngman.
Council member Joan Lamb was absent for this vote.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.
NAYES: None

The Mayor declared the motion carried.

RECESS

Mayor Willich recessed the meeting at 4:50 p.m.

SPECIAL COUNCIL MEETING MINUTES OF THE MAYOR AND CITY COUNCIL CONTINUED CITY OF SUN VALLEY, IDAHO

COUNCIL MEETING OF NOVEMBER 11, 2011.
RECONVENED NOVEMBER 14, 2011 9:00 A.M.
ROLL CALL

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob Youngman, Council member Nils Ribi and Council member Joan Lamb.

ABSENT: None
Council member Joan Lamb participated via telephone.

EXECUTIVE SESSION

MOTION

Council President Dewayne Briscoe moved to enter into Executive Session pursuant to Idaho Code 67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; seconded by Council member Bob Youngman.

Executive Session began at 9:00 a.m.
Executive Session ended at 12:00 p.m.

AMEND AGENDA

MOTION

Council member Bob Youngman moved to add an item to the agenda to discuss hiring an attorney to conduct an independent investigation, seconded by Council President Dewayne Briscoe.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman, Council member Nils Ribi and Council member Joan Lamb.
NAYES: None

The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason was this item just arose during Executive Session.

Council member Nils Ribi indicated he was opposed to starting an independent investigation until Mayor Willich placed the City Administrator on a Leave of Absence.

MOTION

Council member Bob Youngman moved to authorize the Mayor to engage an attorney to conduct an independent investigation, seconded by Council President Dewayne Briscoe.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.
NAYES: Council member Nils Ribi.
Council member Joan Lamb was unable to vote due to a cellular disconnection.

The Mayor declared the motion carried.

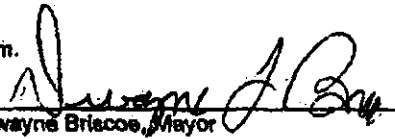
**ADJOURNMENT
MOTION**

Council member Nils Ribi moved to adjourn, seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and
Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.

The Mayor declared the meeting adjourned at 12:08 p.m.


Dewayne Briscoe, Mayor


Kelly Ek, City Clerk

2684599692

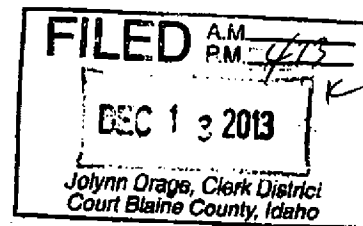
Community Development

02:39:02 p.m. 12-13-2013

1/4

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 and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**SUPPLEMENTAL AFFIDAVIT
 OF JAMES R. DONOVAL IN
 SUPPORT OF PLAINTIFF'S
 MOTION TO COMPEL**

STATE OF IDAHO)
 : ss.
 County of Ada)

I, JAMES R. DONOVAL, being first duly sworn upon oath, depose and state:

1. That my name is James R. Donoval, and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Rules of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal knowledge, and would further swear to such under oath and at trial if required.

2. I am the Defendant/Counterclaimant in the matter of *Ribi v. Donoval*, Case No. CV-2011-1040, Blaine County, Idaho, in which I am also acting as counsel *pro se*.

SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
 PLAINTIFF'S MOTION TO COMPEL - 1

3. On August 30, 2012, in the *Ribi v. Donoval* matter, the New Administration of Sun Valley filed a Motion to Quash a Subpoena I had served on Investigator Ball, seeking documents related to the Hammer Disciplinary Investigation.

4. On September 10, 2012, I filed my Memorandum in Opposition to Motion to Quash in the *Ribi v. Donoval* matter. At the time, I was unable to obtain any Affidavits of current or prior Sun Valley officials related to the matter.

5. On October 22, 2012, the Court entered its Memorandum Decision Granting Non-Party Sun Valley's Motion to Quash Subpoena in the *Ribi v. Donoval* matter.

6. On November 8, 2012, I filed a Motion to Reconsider the ruling by the Court quashing the Subpoena to Investigator Ball related to the Hammer Disciplinary Investigation in the *Ribi v. Donoval* matter. The Motion to Reconsider was supported by an Affidavit of Former Mayor Willich, which contradicted and disputed almost everything that had been stated in pleadings by the New Administration of Sun Valley in regards to the original ruling of the Court related to the Subpoena issued to Investigator Ball.

7. Prior to the Court making any rulings in regards to the Motion to Reconsider in the *Ribi v. Donoval* matter, the Unauthorized Ball Report that I had been seeking as part of the Subpoena to Investigator Ball was released by the New Administration of Sun Valley and published in the on-line section of the *Idaho Mountain Express* newspaper.

8. At a January 15, 2013 hearing in the *Ribi v. Donoval* matter, the Court, on its own, raised the issue that, because the Unauthorized Ball Report had been publicly published, the New Administration of Sun Valley had effectively waived any arguments regarding the documents I was seeking under the Subpoena issued to Investigator Ball related to the Hammer Disciplinary Investigation.

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9. Instead of making any rulings related to the pending Motion to Reconsider, at the January 15, 2013 hearing the Court determined that it would stay any further discovery proceedings, and instead rule on the pending Motion for Summary Judgment against Ms. Brolin-Ribi's emotional distress claims against me. The Court entered an Order describing such on January 29, 2013.

10. On April 23, 2013, the Court in the *Ribi v. Donoval* matter entered summary judgment against Ms. Brolin-Ribi's emotional distress claims against me. Because the Court had also previously entered summary judgment against Council Member Ribi's defamation claims against me, all matters related to the claims of either Council Member Ribi or Ms. Brolin-Ribi were concluded.

11. As all claims by Council Member Ribi and Ms. Brolin-Ribi in *Ribi v. Donoval* were dismissed, any further discovery related to their claims was thereafter unnecessary.

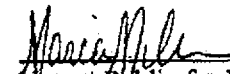
12. The Court in *Ribi v. Donoval* has never thereafter taken up the still pending Motion to Reconsider related to the Subpoena to Investigator Ball as the matter is moot because of the dismissal of all claims against me brought by Council Member Ribi and Ms. Brolin-Ribi.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.


JAMES R. DONOVAL

SUBSCRIBED AND SWORN TO before me this 13th day of December, 2013.




Notary Public for Idaho
My Commission expires 9/24/14

SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL - 3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2013, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
☒ Fax: 383-9516
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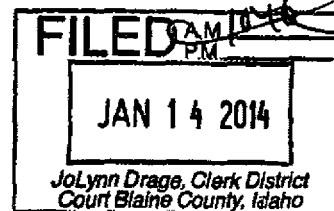
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☐ U.S. Mail
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Defendants, by and through their counsel, Naylor & Hales, P.C., hereby submit their Opposition to Plaintiff's Motion for Reconsideration. For the reasons set forth below, and pursuant to I.R.C.P. 11(a)(2)(B), the Motion should be denied and this Court's dismissal of Defendants Ribi and Briscoe should be upheld.

LEGAL STANDARD

A court may reconsider any of its interlocutory orders pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B). The decision is committed to the sound discretion of the trial court. *E.g., Johnson v. Lambros*, 143 Idaho 468, 473, 147 P.3d 100, 105 (2006). As such, a decision denying

DEFENDANTS' OPPOSITION TO MOTION FOR RECONSIDERATION - 1.

a motion for reconsideration will not be disturbed absent an abuse of discretion. The analysis on appeal would be: (1) whether the court correctly perceived the issue as one of discretion; (2) whether the court acted within the boundaries of such discretion and consistently with applicable legal standards; and (3) whether the court reached its decision by an exercise of reason. *E.g., Blackmore v. Re/Max Tri-Cities, LLC*, 149 Idaho 558, 563, 237 P.3d 655, 660 (2010).

PROCEDURAL BACKGROUND

On November 26, 2013, this Court granted Defendants' Motion to Dismiss the individually named defendants Nils Ribí and Dewayne Briscoe. The reasoning for this dismissal was that Mr. Ribí and Mr. Briscoe are not employers under the definition of the Idaho Protection of Public Employees Act and, as such, are not liable in their individual capacities for a cause of action brought under the IPPEA. Plaintiff filed the pending motion for reconsideration alleging this Court's decision was improper because it "omits language from the statute" which allegedly establishes an "express remedy" for individual liability. In addition, Plaintiff alleges that this Court "does not account for IPPEA violative conduct that falls outside the scope of *respondeat superior* liability." However, it is clear from this Court's prior ruling and analysis that this Court addressed these considerations, and that Plaintiff's current attempt to discount the Court's prior analysis is fruitless.

ARGUMENT

A. Plaintiff Has Not Alleged that Mr. Ribí or Mr. Briscoe Participated in Conduct Which Would Fall Outside the Scope of *Respondeat Superior* Liability.

Regardless of Plaintiff's revised legal argument, even assuming for this argument only that there may be an individual cause of action under the IPPEA, Plaintiff has failed to allege how Mr. Ribí or Mr. Briscoe's conduct 1) violated the IPPEA, and 2) was outside the realm of *respondeat superior* liability. As argued previously, while she makes facial allegations that Mr. Ribí and Mr.

Briscoe acted outside the course and scope of their employment, her main cause of action is based on retaliatory discharge, which discharge would be impossible for Mr. Ribí and Mr. Briscoe to execute outside their official capacities. Finally, pursuant to I.C. § 6-903(5), Mr. Ribí and Mr. Briscoe are presumed to have acted within the course and scope of their employment, and Defendant City of Sun Valley has already admitted through discovery that it will assume any liability arising from proven violations within the course and scope of employment. (See Addendum 1) As Plaintiff seeks damages from violation of the IPPEA, and the City of Sun Valley has already admitted that Mr. Ribí and Mr. Briscoe were acting in their official capacities and is liable for any proven damages from Mr. Ribí and Mr. Briscoe's official conduct, the further pursuit of individual liability is frivolous.

Mr. Ribí and Mr. Briscoe need not be personally liable for Plaintiff to obtain her alleged damages under the IPPEA, and their absence as named individual defendants in no way undermines Plaintiff's ability to seek redress under the IPPEA from her former employer. However, the continuing crusade of Plaintiff to keep Mr. Ribí and Mr. Briscoe as individual defendants seems to imply that the individual liability of Mr. Ribí and Mr. Briscoe is somehow essential to her claims. For such an essential part of her claim, it is noteworthy then that she has failed to establish any IPPEA violative conduct by Mr. Ribí or Mr. Briscoe which would exclude them from *respondeat superior* liability. While she makes various policy arguments as to why individual liability might be beneficial to an IPPEA plaintiff in some vaguely undefined hypothetical, such a perfect storm has not occurred in her own claims.

In fact, even in her "Demand of Judgment for Relief," Plaintiff has not even sought any remedy that would be appropriately apportioned to a non-employer defendant. The only possible

monetary damages she seeks which are authorized under the IPPEA are “lost wages, benefits, and other remuneration,”¹ damages which are apportioned to Defendant City of Sun Valley.

Additionally, Defendant City of Sun Valley has not argued that the actions of Mr. Ribí and Mr. Briscoe would somehow absolve it of any potential IPPEA liability as Plaintiff’s former employer. Therefore, the procedural history of this case and Defendant City of Sun Valley’s prior argument does not support Plaintiff’s proposed doomsday scenario of an employer who somehow avoids all liability by disavowing an offending individual employee or official. Again, in her complaint, while she has facially alleged that Mr. Ribí and Mr. Briscoe acted outside the course and scope of their employment, the adverse employment action that she cites to as violation of the IPPEA (her retaliatory discharge) is fully contained within the course and scope of the employment functions and powers of the City of Sun Valley, as enacted by its agents.

B. Plaintiff’s Renewed and Revised Reliance on I.C. § 6-2105(3) in Isolation is Unreasonable When Considered in the Entirety of the IPPEA.

Plaintiff has brought no new arguments in her motion for reconsideration, but rather has simply repurposed a previously recognized ambiguity in the statutory language which was already fully argued by the parties and resolved by this Court. Plaintiff now proposes that I.C. § 6-2105(3), which she had previously identified as a venue statute implying individual liability,² should now be exclusively considered as an “express remedy” against individual defendants. This is inconsistent

¹Plaintiff states in her demand for relief that her request for “lost wages, benefits, and other remuneration” is “not exclusive,” however, the statutory remedies as found in I.C. § 6-2106 do not provide for any other money damages.

²Plaintiff specifically noted that the IPPEA “expressly anticipates the inclusion of individual defendants (e.g. enumerated proof requirements include placing venue within the ‘county where the person against whom the civil complaint is filed resides.’ I.C. § 6-2105(3). . .” (*Plaintiff’s Response in Opposition to Defendants’ Motion to Dismiss*, p. 2 (emphasis by Plaintiff)).

with the plain language of the provision, this Court's interpretation of the same, and the IPPEA as a whole. Plaintiff again relies heavily on the solitary mention of the word "person" in this provision, pulling it out-of-context from a clause which clearly discusses venue, and combining it with the out-of-context use of the word "remedies" in the heading of the section in order to manufacture an entire cause of action of the IPPEA against individuals. Plaintiff cites to no other provision in the IPPEA, nor in Idaho precedent, to support her statutory invention.

However, in its decision granting dismissal, this Court already interpreted the use of the word "person" in I.C. § 6-2105(3) correctly in context of the IPPEA as a whole, citing to supporting Idaho case law and parallel federal statutes. It recognized that this section "created additional ambiguity," due to the use of the word "person." This Court also clearly acknowledged Plaintiff's prior argument that this provision in the IPPEA, "suggests that an action could be filed against an individual." The Court then discounted that suggestion by holding to the stated legislative intent found in I.C. § 6-2101, the holding of the Idaho Supreme Court in *Van v. Portneuf Medical Center*, and the actual statutory remedies available to an IPPEA plaintiff found in I.C. § 6-2104. Nothing Plaintiff argues here is new, and reconsideration is therefore unnecessary.

Plaintiff also attempts to selectively reproduce the language of I.C. § 6-2105 in order to prop up her argument, and in doing so, avoids the most plain application of the statutory heading and title to the language of the statute itself. As argued in her motion for reconsideration, Plaintiff emphasizes the word "Remedies" in the title, and then reproduces the text of only I.C. § 6-2105(2) and (3), arguing that I.C. § 6-2105(3) specifically refers to the titular "Remedies." However, the use of "Remedies" is most plain and clear when taken in context of the full statute, including the conveniently omitted I.C. § 6-2105(1):

**6-2105. REMEDIES FOR EMPLOYEE BRINGING ACTION --
PROOF REQUIRED.**

(1) As used in this section, "damages" means damages for injury or loss caused by each violation of this chapter, and includes court costs and reasonable attorneys' fees.

(2) An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days after the occurrence of the alleged violation of this chapter.

(3) An action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(4) To prevail in an action brought under the authority of this section, the employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf engaged or intended to engage in an activity protected under section 6-2104, Idaho Code.

After looking at the statute as a whole, its organization and relationship to the heading breaks down quite clearly. Subsections (1) and (2) establish the remedies available to an employee who is alleging violation of the IPPEA, including a provision allowing for an aggrieved employee to bring a civil action. Subsection (3) specifically establishes the proper venue for bringing such an action. Subsection (4) establishes the burden of proof that a plaintiff must meet in alleging a violation of the IPPEA. Specifically, that burden of proof language cites to "activity protected under section 6-2104, Idaho Code," which, as this Court has previously noted, only refers to violations by an "employer," and never once mentions individuals or uses the word, "person."

While focusing her entire argument on the word, "person," Plaintiff's legal argument interestingly fails to acknowledge how the IPPEA, as a whole, rarely addresses individuals in any capacity. Plaintiff's argument does not care to actually acknowledge that throughout the entirety of

the IPPEA, the word “person” is only used twice, once when defining the term, “employee,” and the other in the aforementioned venue statute. *See* I.C. §§ 6-2103(3); 6-2105(3). Plaintiff does not care to acknowledge the absence of the word “person” or any indication of individuals in the substantive prohibitions of employer conduct found in I.C. § 6-2104. Plaintiff does not care to acknowledge the substantive definition of “employer” in I.C. § 6-2103(4), which specifically details various public entities and their agents, but never once includes the word “person,” or any other indication of individuals.

The intent of the IPPEA is not to hold individual persons personally accountable for misconduct but to “protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule, or regulation.” I.C. § 6-2101 (emphasis added). Notable here is the absence of the word, “person,” in addition to the use of “employer.” Were this language to read, “from their employer *or any other person acting in the interests of that employer*,” then Plaintiff’s legal arguments would be within the realm of plausibility. Because this language is non-existent, so is the plausibility of Plaintiff’s motion.

Further, Plaintiff’s insistence upon the conceded “scant” legislative history as supporting individual liability is just as weak as her interpretation of I.C. § 6-2105(3). Looking first to the plain language of the statute, if the legislature desired an IPPEA action against individuals, then it is assumed that they would have discussed as much throughout the entire statutory scheme, and not simply a mention of the word, “person,” when discussing the potential venues for an employee’s civil action. Instead, Plaintiff tries to again take another isolated mention of individuals in the legislative history – “the heads of those [state] agencies” – and thereby manufacture individual liability via this mention. However, the legislative history is in no way determinative of Plaintiff’s

DEFENDANTS’ OPPOSITION TO MOTION FOR RECONSIDERATION - 7.

interpretation, as noted in the text itself. The language cited by Plaintiff was from a committee hearing in a discussion which resulted in a final vote to be held over to a future date when the Attorney General's office would be able to address the questions and concerns of the committee regarding these issues. There is no indication of a final determination of any of these issues in committee. Therefore, the comments made during that meeting should not be considered as a final or binding interpretation of the IPPEA.

For sake of argument, an equally reasonable interpretation to this phrase in the legislative history would be that Representative Berain simply intended to confirm that the agency language as found in I.C. § 6-2104(3)(b) would also include department heads as agents liable under *respondeat superior*. However, without Plaintiff providing the final determination of the committee's later hearing on the matter, her own proposed interpretation is inconclusive. As Plaintiff has absolutely no other evidence or precedent in Idaho to indicate otherwise, this one mention of "the heads of those [state] agencies" in paraphrased, facially inconclusive legislative minutes should not serve to overturn this Court's prior ruling which is soundly based on precedent, the plain language of the statute, and which is not contrary to the legislative history.

C. This Court's Reliance on Title VII Precedent for the Definition of "Employer" Was Accurate and Appropriate.

Plaintiff's arguments to distinguish the Title VII case law upon which this Court relied for its decision further underscores her misapplication of the law. Plaintiff has simply found the word "person" in those decisions, taken it out of context, and matched it to her own out-of-context interpretation of the word "person" in the IPPEA to fashion an argument supporting her position. An analysis of the cases cited leads to a vastly different conclusion. For its prior decision, this Court relied on the determination that Mr. Ribí and Mr. Briscoe were not "employers" as defined by the

IPPEA, and therefore the IPPEA does not support a specific action against them as individuals. In doing so, it relied upon multiple cases from Title VII case law interpreting the same question based on the similarity between the definition of “employer” as found in the IPPEA and Title VII:³

42 U.S.C. § 2000e(b)	I.C. § 6-2103(4)(a) and (b)
The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person . . .	“Employer” means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees retirement system, chapter 13, title 59, Idaho Code; “Employer” includes an agent of an employer.

Based on the similarities between these two statutes, use of Title VII precedent in order to establish the lack of individual liability according to the definition of the term, “employer,” is entirely appropriate. Plaintiff attempts to argue that alternative statutory schemes are more appropriate than Title VII for analysis, but these schemes are distinguishable from the IPPEA because they have a more expansive definition of the term, “employer,” or because they specifically prohibit conduct by individual persons in their statutory language.⁴ In that the statutory basis for the

³The Seventh Circuit noted that the definition of “employer” as used in the ADA, Title VII of the Civil Rights Act of 1964, and the ADEA, were similar enough that “[c]ourts routinely apply arguments regarding individual liability to all three statutes interchangeably.” *U.S. E.E.O.C. v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1282 (7th Cir. 1995). The IPPEA would be similarly regarded.

⁴In the cases alleged by Plaintiff to support her position, the statutes at issue include a more expansive definition of the term “employer,” usually created through additional language indicating that persons other than employees or agents are acting directly or indirectly in the interests of the employer, which language is not found in the IPPEA. *See Genaro v. Cent. Transp., Inc.*, 1999-Ohio-353, 84 Ohio St. 3d 293, 298-99, 703 N.E.2d 782, 787 (1999) (statute at issue held to be “much broader in scope” than Title VII in that it defined “employer” as “any person employing four or more persons within the state, * * * and any person acting directly or indirectly in the interest of an employer.”) (emphasis in original); *Cooper v. Albacore Holdings, Inc.*, 204 S.W.3d 238, 243 (Mo. Ct. App. 2006) (statute at issue held to be “broader in scope than that found in Title VII,” in that it defined “employer” as “any person employing six or more persons within the state, and any person directly acting in the interest of an employer.”)

legal reasoning in Plaintiff's proposed cases are distinguishable, her legal analysis is unsound. These cases found personal liability when the statute broadly defines employer to include any other person working in the employer's interest. That language is broad enough to create individual liability, because these statutes are intended to include violative conduct of others who are those who are not necessarily employees or agents of the employer. Were the IPPEA written with such an expansive definition of "employer," then Plaintiff's argument might have been plausible. Instead, the language in Title VII mirrors that in the IPPEA, and thus Title VII precedent is the appropriate comparison to the IPPEA.

D. Plaintiff's "Parade of Horribles" Policy Arguments Are Implausible Because IPPEA Defined Employers Are Statutorily Liable for Violative Conduct.

Plaintiff's last-ditch policy argument is that not allowing individual liability will allow supervisors and others in higher employer positions to violate the IPPEA at will, unchecked and uncontrolled. Such an argument was summarily discounted by the Seventh Circuit in discussing the similarly structured ADA:

Lacking the support of the structure arguments, the EEOC and Wessel bring forth a short parade of horrors. They say that individual liability is essential to dissuade supervisors and other individuals from violating the law. They argue that the paramount consideration is stamping out discrimination and that through the loophole of no individual liability will pour a flood of unpunished and undeterrable discrimination.

(emphasis in original).

Additionally, Plaintiff's reliance on *Tomka v. Seiler Corp.*, 66 F.3d 1295 (2nd Cir. 1995), and *Cooper v. Albacore Holdings*, 204 S.W.3d 238 (Miss. Ct. App. 2006), is fully distinguishable to the IPPEA due to their respective statutes use of the word "person" in their substantive prohibitions against conduct, not simply in a venue statute. The vast substantive differences in statutory language found in these cases with the IPPEA makes Plaintiff's attempted comparisons invalid.

We reject that Chicken Little-esque argument. The employing entity is still liable, and that entity and its managers have the proper incentives to adequately discipline wayward employees, as well as to instruct and train employees to avoid actions that might impose liability. It is true that increasing the number of potentially liable defendants would increase deterrence, as businesses put more resources into avoiding liability and plaintiffs saw more potentially liable parties and had a greater incentive to sue in marginal cases. But Congress has struck a balance between deterrence and societal cost, and we will not upset that balance. We do not doubt that the employment discrimination statutes have broad remedial purposes and should be interpreted liberally, but that cannot trump the narrow, focused conclusion we draw from the structure and logic of the statutes. A liberal construction does not mean one that flies in the face of the structure of the statute. *See Hudson*, 873 F.Supp. at 136 (“[W]e cannot reverse course in the face of some vague, aspirational broad intent. Congress had lofty goals but provided limited means for reaching those goals. Individual liability was not one of them.”). We hold that individuals who do not otherwise meet the statutory definition of “employer” cannot be liable under the ADA.

U.S. E.E.O.C., 55 F.3d at 1282. Again, Plaintiff has failed to show how the adverse conduct that she faced would allow this type of abuse of the IPPEA, other than the mere proposition that such an abuse is imaginable.

In a correlated fear, Plaintiff seems to be under the impression that employers will be able to somehow allege that the conduct of their employees was outside the course and scope of employment, therefore leaving plaintiffs without an individual cause of action against those employees would deny them any possible recourse against violations of the IPPEA. Defendants cannot imagine a plausible hypothetical where this issue of law would arise, as the IPPEA specifically creates employer liability for adverse actions taken against an employee’s employment conditions. As noted by this Court, any conduct outside the course and scope of an individual’s

employment would presumably open that individual to other legal remedies, but not to the IPPEA.⁵ Again, in any event, such an implausible scenario is not at issue here, where Plaintiff has only facially alleged that Mr. Ribí and Mr. Briscoe's conduct was outside the course and scope of their employment and Defendant City of Sun Valley remains in this action as the IPPEA defined employer.

CONCLUSION

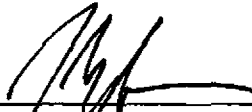
Plaintiff's desperate attempt to keep Mr. Ribí and Mr. Briscoe as individual defendants through such sparse legal analysis is perplexing. Defendant City of Sun Valley remains in this litigation, and there has been no attempt to artificially manipulate this Court's prior decision to create a full dismissal of Plaintiff's entire action. Should Plaintiff prevail, all damages that she currently seeks are fully available from Defendant City of Sun Valley, and are only available from the City of Sun Valley. However, instead of saving the parties and this Court's time and resources in continuing on with the alleged merits of her claim and actually obtain the remedies she seeks, Plaintiff is still trying to piece together an individual claim against only Mr. Ribí and Mr. Briscoe based solely on a strained connection between the terms "remedies," "person," and "the heads of those [state] agencies," all taken out-of-context. Plaintiff's proposed interpretation is contrary to the plain language of the whole of the IPPEA, all Idaho case law interpreting the IPPEA, and valid interpretation of a multitude of case law similarly interpreting the parallel Title VII definition of "employer."

⁵Plaintiff has brought such claims against Mr. Ribí and Mr. Briscoe in their individual capacities in federal court. *See Hammer v. City of Sun Valley, et. al.*, Federal District of Idaho Case No. 1:13-CV-00211-EJL.

In light of Plaintiff's lack of legal or factual basis for her motion for reconsideration, Defendant requests that this Court deny her motion.

DATED this 13th day of January, 2014.

NAYLOR & HALES, P.C.

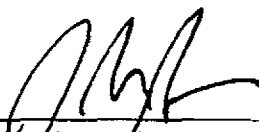
By  For:
Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
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 For:
Kirtlan G. Naylor

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Attorneys for Defendant City of Sun Valley

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY;

NILS RIBI, in his individual and official capacity;
DeWAYNE BRISCOE, in his individual and official
capacity; ADAM KING, in his official capacity;
ROBERT YOUNGMAN, in his official capacity;
KELLY EK, in her official capacity;
MICHELLE FROSTENSON, in her official capacity;
FRANZ SUHADOLNIK, in his official capacity;
MICHELLE GRIFFITH, in her official capacity;
JOAN LAMB, in her official capacity; and
WAYNE WILLICH, in his official capacity,

Defendants.

Case No. CV-2011-928

**DEFENDANT CITY OF SUN
VALLEY'S ANSWERS TO
PLAINTIFF'S SECOND
AMENDED REQUESTS FOR
ADMISSIONS TO CITY OF SUN
VALLEY**

COMES NOW Defendant City of Sun Valley, by and through its attorneys of record,
the law firm of Naylor & Hales, P.C., pursuant to Rules 26 and 36 of the Idaho Rules of Civil

DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 1.

Procedure, and hereby responds to Plaintiff's Second Amended First Set of Requests for Admission to City of Sun Valley as follows:

AMENDED REQUEST FOR ADMISSION NO. 1: Admit that as to any facts relating to *Nils Ribi* in his official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Nils Ribi* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 2: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out *Nils Ribi*'s conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 3: Admit that as to any facts relating to *DeWayne Briscoe* in his official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *DeWayne Briscoe* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 4: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *DeWayne Briscoe*'s conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 5: Admit that as to any facts relating to *Adam King* in his official capacity alleged in Plaintiff's IPPEA Complaint against

DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 2.

Sun Valley, *Adam King* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 6: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Adam King's* conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 7: Admit that as to any facts relating to *Robert Youngman* in his official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Robert Youngman* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 8: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Robert Youngman's* conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 9: Admit that as to any facts relating to *Kelly Ek* in her official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Kelly Ek* was acting in the course and scope of her employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 3.

AMENDED REQUEST FOR ADMISSION NO. 10: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Kelly Ek's* conduct while acting within the course or scope of her employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 11: Admit that as to any facts relating to *Michelle Frostenson* in her official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Michelle Frostenson* was acting in the course and scope of her employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 12: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Michelle Frostenson's* conduct while acting within the course or scope of her employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 13: Admit that as to any facts relating to *Franz Suhadolnik* in his official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Franz Suhadolnik* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 14: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Franz Suhadolnik's* conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 4.

AMENDED REQUEST FOR ADMISSION NO. 15: Admit that as to any facts relating to *Michelle Griffith* in her official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Michelle Griffith* was acting in the course and scope of her employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 16: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Michelle Griffith*'s conduct while acting within the course or scope of her employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 17: Admit that as to any facts relating to *Joan Lamb* in her official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Joan Lamb* was acting in the course and scope of her employment/official position consistent with Idaho Code § 6-2103(3).

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 18: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Joan Lamb*'s conduct while acting within the course or scope of her employment.

RESPONSE: The City of Sun Valley admits.

AMENDED REQUEST FOR ADMISSION NO. 19: Admit that as to any facts relating to *Wayne Willich* in his official capacity alleged in Plaintiff's IPPEA Complaint against Sun Valley, *Wayne Willich* was acting in the course and scope of his employment/official position consistent with Idaho Code § 6-2103(3).

DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 5.

RESPONSE: The City of Sun Valley admits.

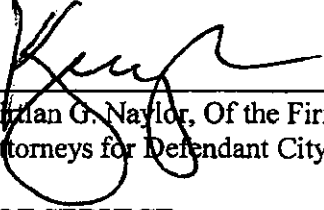
AMENDED REQUEST FOR ADMISSION NO. 20: Admit that pursuant to Idaho Code §§ 6-2101, *et seq.*, Sun Valley is liable for any proven damages arising out of *Wayne Willich's* conduct while acting within the course or scope of his employment.

RESPONSE: The City of Sun Valley admits.

DATED this 10th day of December, 2012.

NAYLOR & HALES, P.C.

By

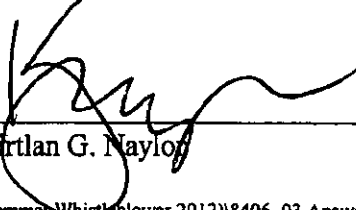

Kirtlan G. Naylor, Of the Firm
Attorneys for Defendant City of Sun Valley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

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Kirtlan G. Naylor

M:\CRMP\Hammer v. Sun Valley\Pleadings & Cases\VCV12-479 (Hammer Whistleblower 2012)\8406_03 Answer to 2nd Amended RFAs.wpd

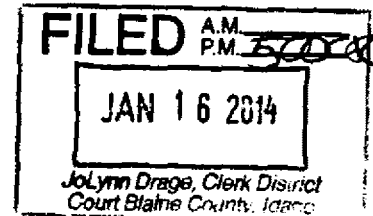
DEFENDANT CITY OF SUN VALLEY'S ANSWERS - 6.

ADDENDUM 1

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**REPLY MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION
OF DEFENDANTS RIBI AND
BRISCOE'S MOTION TO DISMISS**

I.

INTRODUCTION

If the Idaho Legislature intended to limit Idaho Protection of Public Employees Act ("IPPEA") claims against employers, it would have stated as much. Instead, the Legislature enacted the IPPEA with a provision that unambiguously provides for a cause of action against a "person." A public employer is not a person. A person is someone who works for a public employer. The Court must read and apply the unambiguous language of the IPPEA.

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF
DEFENDANTS RIBI AND BRISCOE'S MOTION TO DISMISS - 1

On a Motion to Dismiss, the Court must also take Ms. Hammer's factual allegations as true. Ms. Hammer's Amended Complaint alleges that Defendants Briscoe and Ribí worked for the City of Sun Valley when they engaged in conduct that adversely affected Ms. Hammer, and that some or all of Defendants Ribí and Briscoe's conduct fell outside the scope of their employment for which they are personally liable, as "persons" under the IPPEA.

Defendants' Motion to Dismiss should not have been granted on the ground that Ms. Hammer did not state a cause of action against them because the IPPEA does not provide for a cause of action against a person. The IPPEA provides for a cause of action against the Defendants. And, Ms. Hammer properly alleged that claim.

None of the Defendants' arguments change the Court's need to reverse its ruling dismissing the Defendants. Contrary to Defendants' argument, Ms. Hammer's Amended Complaint does state that Defendants Ribí and Briscoe acted outside the scope of their employment.¹ Contrary to the Defendants' argument, a cause of action against a person is not only expressly provided for in the IPPEA but such cause of action is consistent with the IPPEA intent of providing broad protection to public employees. Contrary to Defendants' argument, Title VII and case law interpreting it is inapplicable; the divergence from a lack of individual liability under Title VII is uniformly found where state statutes provide for individual liability. Finally, the Defendants' argument that there is no situation where a public employer cannot be liable for an agent's conduct ignores the law of *respondeat superior* – a law that this Court must assume the Idaho Legislature knew when enacting the IPPEA with an express remedy against a person.

¹ Amended Complaint, ¶¶ 3 and 4.

II.

ARGUMENT

A. Defendants Are Asking the Court to Rewrite the IPPEA

Defendants' opposition to Ms. Hammer's Motion for Reconsideration does not address this Court's obligation to read the plain and unambiguous language of the IPPEA. They, instead, encourage the Court to amend the IPPEA by omitting plain and unambiguous language in the IPPEA. There has been no argument or finding that reading the IPPEA as written is palpably absurd. Nor has there been an argument or finding that the actual language providing for a cause of action against a person is ambiguous. Without such findings, the Court is obligated to give effect to every word in the IPPEA. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685 688 (1999) ("Unless the result is palpably absurd, this Court assumes that the legislature meant what is clearly stated in the statute."); *Ingram v. State Wagon-Road Comm'n*, 4 Idaho 139 (1894) ("Any construction which fails to give effect to the word and letter of the statute, or which would leave any clause as meaningless, or give it an absurd signification, is never admissible whenever any other interpretation is possible."); *State v. Urrabazo*, 150 Idaho 158, 162, 244 P.3d 1244, 1248 (2010) ("read[ing] the words ... out of the statute ... would violate the rule of statutory construction requiring every word in a statute to be given its plain meaning.").

Including and giving effect to the IPPEA remedy against a "person" in no way creates an ambiguity or palpable absurdity. Its effect is consistent with the IPPEA's intent to protect public employees against any and all adverse action – not just action that could be carried out by an employer, such as termination of employment, as argued by the Defendants. Any and all such adverse action expressly includes conduct that cannot be within the course and scope of employment with a public employer: "threaten[ing] or otherwise discriminat[ing] against an

employee in any manner that affects the employee's employment...." (I.C. § 6-2103.) The Idaho Legislature's broad definition of adverse action to include conduct that falls outside of the scope of employment, and its inclusion of a remedy against a "person," is consistent with the assumption that this Court is obligated to make – the Idaho Legislature knew Idaho's *respondent*

superior law and wanted to ensure that the IPPEA intent or remedies thereunder were not nullified. "[T]his Court assumes that the legislature knows about existing judicial decisions when it enacts a statute." *State v. Oar*, 129 Idaho 337, 340, 924 P.2d 599, 602 (1996). The IPPEA was enacted in 1994. Idaho's *respondent superior* law has been settled by judicial decisions since at least 1924² and has remained undisturbed since then.³

B. The Title VII Cases Cited by Defendants and Relied Upon by the Court Actually Support This Court's Denial of the Defendants' Motion to Dismiss

Defendants are asking this Court to read Title VII and cases interpreting Title VII without regard to the differences between Title VII and the IPPEA and without regard to the rationale behind the conclusion that there is no individual liability under Title VII. Specifically, the lack of individual liability under Title VII hinges on Title VII's application to an employer with a minimum number of employees and does not, anywhere, mention a cause of action against a "person." In contrast, the IPPEA expressly provides for a cause of action against a person. The IPPEA certainly does not contain the Title VII small employer provision that the Courts have cited in finding no individual liability under Title VII: "If Congress decided to protect small entities with limited resources from liability, it is inconceivable that Congress intended to allow

² *T. W. & L. O. Naylor Co. v. Bowman*, 39 Idaho 764, 230 P. 347 (1924) ("A principal cannot be bound by the acts of an agent done outside of the actual or apparent scope of his authority, unless such acts have been ratified and adopted by the principal.")

³ See, e.g., *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008) ("The actions of an agent are the actions of the corporation. An agent is only liable for actions which are outside its scope of duty to the corporation.") Citing *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho*, 123 Idaho 650, 654, 851 P.2d 946, 948 (1993).

civil liability to run against individual employees.” *E.E.O.C. v. AIC Security*, 55 F.3d 1276, 1281 (7th Cir. 1995). Defendants’ side-by-side comparison of Title VII and the IPPEA demonstrates the Idaho Legislature’s lack of desire to limit the scope of the IPPEA.

Upholding a cause of action against a person under the IPPEA is not only consistent with the plain language of the IPPEA, but is also consistent with the *Tomka* case that this Court relied upon when denying Ms. Hammer the right to sue Defendants Ribí and Briscoe in their individual capacity. *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2nd Cir. 1995) (finding individual liability under the New York Human Rights Law which uses the word “person”). The Court’s reversal of its decision on the Motion to Dismiss is also supported by: *Cooper v. Albacore Holdings*, 204 S.W.3d 238, 244 (Miss. Ct. App. 2006) (Disfavoring *Lenhardt* and finding individual liability under the Missouri Human Rights Act (“MHRA”) because the Act refers to the word “person” – “the MHRA imposes individual liability in the event of discriminatory conduct.”); *Genaro v. Central Transport*, 84 Ohio St.3d 293, 703 N.E.2d 782 (Ohio Sup. Ct. 1999) (rejecting a Title VII analysis of the Ohio anti-discrimination provision and determining that individual liability was imposed under the Ohio law based on the use of the phrase “person” in the statute.); *Blazek v. U.S. Cellular*, 937 F.Supp.2d 1003 (N.D. Iowa 2011) (finding that Title VII personal liability rationale exemption does not apply to the Iowa Human Rights Act). And, in a slew of cases from New Jersey, the U.S. District Court for New Jersey and various New Jersey courts have determined that there is personal liability under the New Jersey Conscientious Employee Protection Act that applied to “any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer’s consent.” See *Palladino v. VNA of Southern New Jersey*, 68 F.Supp.2d 455 (U.S. Dist. Ct. N.J. 1999); *Espinosa v. Continental*

Airlines, 80 F.Supp.2d 297 (U.S. Dist. Ct. N.J. 2000); *Maw v. Adv. Clinical Communications, Inc.*, 359 N.J. Super. 420, 820 A.2d 105 (Ct. App. 2003).

III.

CONCLUSION

For the foregoing reasons, Plaintiff Sharon Hammer respectfully requests that this Court reconsider having granted Defendants Ribí and Briscoe's Motion to Dismiss.

DATED this 16th day of January, 2014.

JONES & SWARTZ PLLC

By



ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 16th day of January, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950-W. Bannock Street, Suite 610
Boise, ID 83702-6103

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☐ Hand Delivery
☐ Email: kirt@naylorhales.com

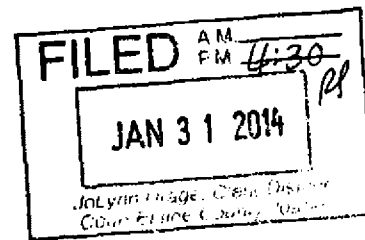
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

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JOY M. VEGA

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S MOTION FOR
RECONSIDERATION OF PLAINTIFF'S
MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL
AND TO COMPEL THE PRODUCTION
OF DOCUMENTS WITHHELD FROM
PRODUCTION IN DISCOVERY AND IN
RESPONSE TO SUBPOENA**

ORAL ARGUMENT REQUESTED

COMES NOW the Plaintiff, Sharon R. Hammer ("Ms. Hammer"), by and through her counsel of record, Jones & Swartz PLLC, and pursuant to Rules 7(b)(1) and 11(a)(2)(B) of the Idaho Rules of Civil Procedure hereby moves this Court to reconsider having denied PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA. The Court's current finding provides for a blanket work-product privilege covering in excess of two hundred (200) emails and attachments and other correspondence without

PLAINTIFF'S MOTION FOR RECONSIDERATION OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - 1

requiring the City of Sun Valley and Patricia Ball to prove that each withheld document actually qualifies for protection. It may be that these withheld materials should be redacted in part rather than completely withheld. It may be that these materials should not be redacted or withheld. The City and Ms. Ball's privilege log does not identify why these materials qualify for work-product protection and they did not submit evidence to support such protection. The Court assumes that the materials (which it generally described without review of the same) were in anticipation of litigation, when there is no testimony to that effect and where Former Mayor Willich's testimony states otherwise. The Court's current ruling was also made without the benefit of Former Mayor Willich's testimony about and regarding certain conclusions and assumptions that the Court made in its ruling.

This Motion is made and supported by the pleadings of record herein and is further supported by the Supplemental Affidavit of Wayne Willich filed contemporaneously herewith and incorporated herein, and will be further supported by a Memorandum that will be filed within fourteen days of this motion.

By this Motion, Plaintiff Sharon Hammer respectfully requests that the Court:

1. Order the production of materials, in whole or redacted as necessary, withheld where the City of Sun Valley and/or Patricia Ball fail to prove with evidence that such materials (in whole or in part) qualify for protection;

2. Conduct an *in camera* review of the materials being withheld on grounds of privileges established by the party claiming the same, and:

- a. Order the production of such documents if the Court finds no applicable privilege or a waiver thereof;

PLAINTIFF'S MOTION FOR RECONSIDERATION OF PLAINTIFF'S MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL AND TO COMPEL THE PRODUCTION OF DOCUMENTS
WITHHELD FROM PRODUCTION IN DISCOVERY AND IN RESPONSE TO SUBPOENA - 2

b. Order redacted production to reveal facts, but preserve truly confidential information or attorneys' mental impressions;

3. Order the production of materials in their entirety that are being withheld on un-established claims of privilege;

4. Order the production of materials for which any applicable privilege was waived; and

5. Award Ms. Hammer her attorney fees and costs incurred as a result of having to bring this motion.

DATED this 31st day of January, 2014.

JONES & SWARTZ PLLC

By



ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

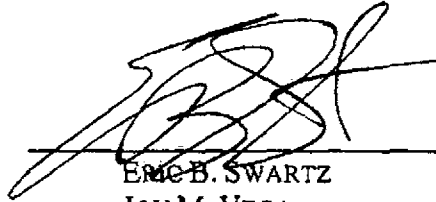
I HEREBY CERTIFY that on this 31st day of January, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
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Boise, ID 83702-6103-

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☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☐ U.S. Mail
☒ Fax: (208) 436-5272
☐ Overnight Delivery
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☐ Email:



ERIC B. SWARTZ
JOY M. VEGA

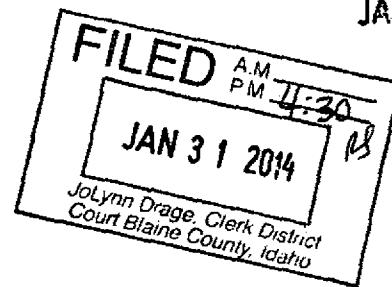
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Community Development

01:34:25 p.m. 01-31-2014

1/B- —

Eric B. Swartz, ISB #6396
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JAN 31 2014

Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

Case No. CV-2012-479

vs.

CITY OF SUN VALLEY;
 NILS RIBI, in his individual and official capacity;
 DeWAYNE BRISCOE, in his individual and official
 capacity;

Defendants.

SUPPLEMENTAL AFFIDAVIT OF WAYNE WILLICH
FORMER MAYOR OF THE CITY OF SUN VALLEY
IN SUPPORT OF MOTION TO RECONSIDER DENIAL OF MOTION TO COMPEL

I, WAYNE WILLICH, first duly sworn on oath, depose and state as follows:

1) My name is Wayne Willich, and from the first week of January of 2008 to January 3, 2012, I was the duly elected Mayor of the City Of Sun Valley, Idaho ("Sun Valley"), and that I am competent to testify as to the matters herein. I certify pursuant to Rule 11 of the Idaho Code Of Civil Procedure, that the facts alleged herein are true and accurate and are made with personal

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Community Development

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2/8

knowledge, and would further swear to such under oath and at trial if required.

2) I have previously filed an Affidavit in the matter herein and stand on the veracity and truthfulness of the statements made under oath in that Affidavit.

3) I have reviewed the pleadings and affidavits associated with the Motion To Compel herein, and have reviewed the Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel ("Memorandum Decision").

4) I find many factual statements of the Court in the Memorandum Decision, and in particular statements related to my actions and decisions, to be incorrect. I believe that many of the incorrect statements in the Memorandum Decision are due to the fact that I was not allowed to review any of the communications submitted by Sun Valley in opposition to the Motion to Compel *in camera* to the Court or confirm that they were ever sent or received by myself, or as to the veracity of the statements in the communications.

5) I find it to be disturbing that correspondences and communications purportedly from me to other persons, or to me from other persons, including purportedly to or from Attorney Naylor, Investigator Ball, City Attorney King or Mayor Elect Briscoe, have been considered by the Court to have been legitimate without my acknowledgement of ever having sent them, or received them, or as to their veracity.

6) I did not retain my email correspondences as Mayor of Sun Valley, nor have I had access to such emails since my last day in office as Mayor of Sun Valley on January 3, 2012.

7) In particular, I have no particular recollection of ever sending the following emails which have been disclosed by Sun Valley as having purportedly been sent by myself pursuant to a Privilege Log provided to Ms. Hammer during discovery in the matter:

11/22/2011	BALL 522	Willich to Ball, copy to King
11/22/2011	BALL 518	Willich to Ball, copy to Briscoe and King
11/25/2011	BALL 519	Willich to Ball, copy to Briscoe and King
11/25/2011	BALL 691	Willich to Ball

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3/8

12/1/2011	BALL 434-499	Willich to King, copy to Ball
12/6/2011	BALL 508-509	Willich to Ball
12/6/2011	BALL 512-514	Willich to Ball
12/12/2011	BALL 764	Willich to Ball
12/13/2011	BALL 1044	Willich to Ball and Naylor, copy to King and Briscoe
12/22/2011	BALL 533	Willich to Ball and King
12/22/2011	BALL 538-539	Willich to Ball and King

8) In addition, if I did send the emails described in paragraph 6 above, the topics of the emails were in regards to what duties Investigator Ball was to perform, the scheduling of the interviews in the Hammer Disciplinary Investigation, when Investigator Ball would complete her written report, and other administrative matters. I deny that in any of the correspondences did I seek any legal advice or discuss any matters related to the Hammer Law Suit with either Investigator Ball, Attorney Naylor, City Attorney King or Mayor Elect Briscoe.

9) In addition, the Privilege Log includes multiple emails that were supposedly sent to me, many of which I may never have opened, may have been blocked by my spam program, I never read, or which I read but refused to respond to. I also find it disturbing that the Court would consider these correspondences in making its decisions without any knowledge related to my actual receipt of the correspondences or my reactions or responses to the communications. I also have no recollection that in any of the correspondences that I may have read, was there any legal advice provided or any discussions related to the Hammer Law Suit with either Investigator Ball, Attorney Naylor, City Attorney King or Mayor Elect Briscoe.

10) Until such time as I am able to review the emails and communications provided to the Court by Sun Valley related to the Motion To Compel, or which I am supposedly a sender or receiver, I cannot vouch for their accuracy or that they were even sent by me or received by me.

11) As I have stated in my previous Affidavit, other than to provide me with names of attorneys that would possibly become the independent investigator related to the Hammer Disciplinary Investigation, and that he contact them and determine whether they would be available to do so, I deny that I ever provided City Attorney King any authority to be involved in or make any decisions related to the Hammer Disciplinary Investigation, especially because he

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Community Development

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4/8

had already been sued by Ms. Hammer as part of the Hammer Law Suit and because he was to be interviewed as part of the Hammer Disciplinary Investigation himself. If City Attorney King gave Investigator Ball any indication that she was being retained in regards to litigation matters or the Hammer Law Suit, and not simply to perform an independent, fact finding, disciplinary investigation unrelated to the Hammer Law Suit, City Attorney King did so outside the scope of his duties and the directions that I had given him to simply help me find an investigator. Therefore, if City Attorney King "contacted Ms. Ball about the possibility of retaining her services for a fact-finding investigation regarding various allegations that could be subject of litigation", as is stated in the Memorandum Decision, that is an incorrect conclusion regarding the limited scope of what City Attorney King was supposed to discuss with, or disclose to, Investigator Ball.

12) As I have stated in my previous Affidavit, I deny that I ever discussed with Investigator Ball that she was being retained in regards to any pending or threatened litigation, that we ever discussed the pending Hammer Law Suit, or that her work would be used in regards to any pending litigation including the Hammer Law Suit, in any of our discussions prior to the signing of her retainer agreement on November 23, 2011 or thereafter. If Investigator Ball was made aware of the Hammer Law Suit or of any of the correspondences threatening litigation that had been sent to Sun Valley by Ms. Hammer's attorney, it was not by me, and it was done without my knowledge or approval, possibly by City Attorney King or Attorney Naylor.

13) I specifically deny the finding of the Court that "Mr. Naylor was appointed as Ms. Ball's primary legal contact on November 28, 2011". As the Mayor of Sun Valley, and the responsible party for the Hammer Disciplinary Investigation, I had the sole authority to make determinations as to the proceedings in the Hammer Disciplinary Investigation. Neither City Attorney King, Mayor Elect Briscoe or Attorney Naylor had any right to instruct Investigator Ball that Attorney Naylor was to have any involvement in the Hammer Disciplinary Investigation, or act as Investigator Ball's legal contact in regards to the Hammer Disciplinary Investigation, without my knowledge or approval, which was never given. The Privilege Log does not show any written communications between myself and Attorney Naylor, Investigator Ball, City Attorney King or Mayor Elect Briscoe on November 28, 2011 that could have possibly

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Community Development

01:35:54 p.m. 01-31-2014

5/8

given any of them the indication that I had provided Attorney Naylor with any authority in regards to the Hammer Disciplinary Investigation on that date as the Court has somehow concluded. In fact, as I have otherwise made clear in my prior Affidavit, after ICRMP refused my request to provide a different attorney than Attorney Naylor to defend the Hammer Law Suit, I specifically instructed Attorney Naylor that he was to have no part in the Hammer Disciplinary Investigation, other than to be able to receive the report produced by Investigator Ball at the end of the Hammer Disciplinary Investigation. I also reaffirm that I never provided Investigator Ball with any authority to even contact Attorney Naylor or discuss the Hammer Disciplinary Investigation with Attorney Naylor.

14) I specifically deny the Court's conclusion that "Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation." Although Attorney Naylor, City Attorney King, Investigator Ball and Mayor Elect Briscoe may have retroactively asserted that Investigator Ball was retained in regards to litigation or the Hammer Law Suit, there is no question that when I retained Investigator Ball it was solely to assist me in making my decision related to whether to discipline Ms. Hammer or not. The Court's finding also ignores the fact that I mandated that the written report showed to me at City Attorney King's office on December 12, 2011 be kept at City Attorney King's office, in large part, so that it could not be used by Attorney Naylor in the defense of the Hammer Law Suit because of its multiple flaws, errors and erroneous and unauthorized conclusions.

15) I am very concerned and disturbed with the Court's findings that "In fact, email communications provided *in camera* contradict Mr. Willich's assertions that he gave Ms. Ball no authority or direction to modify the "Final Ball Report" in any manner after December 12, 2011". The only emails disclosed in the Privilege Log from which the Court could conclude that I gave this purported direction, is the December 12, 2011 email described as "BALL 764, Willich to Ball" and the December 13, 2011 email described as "BALL 1044, Willich to Ball, copy to King and Briscoe". I have no recollection of sending these emails. Until such time as I can review and confirm that I sent these emails, and that the contents are accurate, I find it unacceptable and inaccurate for the Court to conclude that these purported email communications from me to Investigator Ball and Attorney Naylor, or any other communication

in the Court's possession, was ever actually sent by me, or gave Investigator Ball any direction related to continuing the Hammer Disciplinary Investigation after December 12, 2011, without my ability to confirm the sending of the email or other communication and the intent of the email or communication.

16) Although I do not remember sending the December 12, 2011 email or the December 13, 2011 email, at the time, I do remember that I was angry at Investigator Ball for failing to follow my explicit instructions to interview Sun Valley City Council member Joan Lamb in regards to Ms. Hammer's allegations of harassment and misconduct against Council Member Ribbi, whom I believe would have verified Council Member Ribbi's anger and hostility towards, and harassment of, Ms. Hammer. I believed that Investigator Ball refused to interview Council Member Lamb at the direction of Attorney Naylor, in contradiction to my explicit directions, and told her so. Investigator Ball's refusal to interview Council Member Lamb was a large part of my decision to end Investigator Ball's work for Sun Valley at that juncture. Any assertion that I directed Investigator Ball to continue preparing a report in regards to the Hammer Disciplinary Investigation on or about December 13, 2011, is simply contrary to what was occurring at that point of time.

17) I do remember making comments to Investigator Ball, Attorney Naylor, Mayor Elect Briscoe and City Attorney King at the meeting of December 12, 2011, that there may be the need to continue investigating the allegations of misconduct and harassment against Council Member Ribbi, to investigate misconduct that related to Former Treasurer Frostenson's handling of Sun Valley finances that was discovered as part of the Hammer Disciplinary Investigation, and to look into some of the Sun Valley Fire Department issues raised in the Hammer Disciplinary Investigation, unrelated to any allegations of misconduct against Ms. Hammer, but that the next administration of Mayor Elect Briscoe would have to take on that responsibility. However, I informed all involved that as far as I was concerned, the Hammer Disciplinary Investigation, and any other investigations during my tenure as Mayor of Sun Valley, were completed. If I sent emails on December 12, 2011 or December 13, 2011, it may have been in regards to additional investigations of those matters after my term as Mayor of Sun Valley was over, rather than in regards to any matters associated with Ms. Hammer. However, I certainly do not remember

directing Investigator Ball to continue working on those matters, nor did I ever intend that she do so.

18) In addition, the Court's conclusion that I sought to continue the Hammer Disciplinary Investigation after December 12, 2011, totally ignores the meeting and conversations I had with Attorney Naylor on December 16, 2011, and which are sworn to in my previous Affidavit, in which I specifically told Attorney Naylor that the Hammer Disciplinary Investigation was over, which is at least four days before Investigator Ball prepared the unauthorized report dated December 20, 2011, which I never saw until about a year later when it was published in the Idaho Mountain Express newspaper on-line edition.

19) Contrary to the Court's finding regarding my conversation with Ms. Hammer at the Sun Valley Golf Clubhouse on December 19, 2011, I never indicated to Ms. Hammer that Investigator Ball's report was still being finished. What I indicated to Ms. Hammer at that meeting was that there were still some unresolved issues related to Council Member Ribí, Former Treasurer Frostenson and the Sun Valley Fire Department, unrelated to Ms. Hammer, that may need further investigation after Mayor Elect Briscoe was sworn into office as the new mayor of Sun Valley on January 3, 2012. At the time I did not tell Ms. Hammer that I had ended Investigator Ball's relationship with Sun Valley. Ms. Hammer may have assumed that Investigator Ball was handling the other matters related to Council Member Ribí, Former Treasurer Frostenson and the Sun Valley Fire Department, when such was not the case.

20) The Court should also note that subsequent to the end of my term as the Mayor of Sun Valley, I have discovered that unknown Sun Valley employees or officials have forged my initials and/or signature on financial documents. I have filed an Affidavit, under oath, describing such in the matter of Donoval v. Sun Valley, CV-2012-600, Blaine County. I also discovered that several payroll documents that I was shown during the forensic audit and investigation by the Idaho Attorney General's office also indicated signatures and initials that purported to be mine, but that I did not recognize, on documents that I did not recognize either. Based on my personal history with him, I also simply do not trust Attorney Naylor to be providing truthful information to the Court.

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Community Development

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21) Until such time as I am allowed to review the communications and documents that have been provided to the Court related to the Motion To Compel and upon which the Court based its Memorandum Decision, that purport to be to me, from me, or have my signature or initials on them, and am able to verify their veracity, I must deny the legitimacy and veracity of any and all of the emails, communications or documents which the Court has used in making the Memorandum Decision.

22) I request that the Court allow me to obtain each and every email or other communications submitted by Sun Valley in objection to the Motion to Compel which I am asserted to have been a sender or receiver of, that I be allowed to thereafter review each and every email or other communication with an attorney of my choice, and that I be allowed to file an additional Affidavit with the Court, *in camera* if required, detailing whether I sent, or received the emails or other communications, and that I am allowed to explain the circumstances associated with, or the meaning of, each and every email or communication.

Further Affiant sayeth not.

Subscribed To And Sworn Before
Me This 29th Day Of January
2014.

Notary Public

Wayne Willich
Wayne Willich

MELISSA MCKENZIE
Notary Public
State of Idaho

CERTIFICATE OF SERVICE

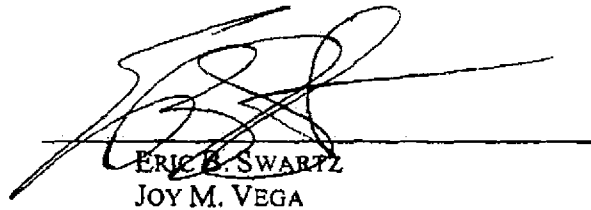
I HEREBY CERTIFY that on this 31st day of January, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
☒ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☐ U.S. Mail
☒ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

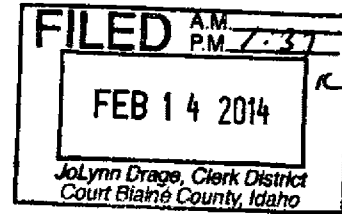


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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF PLAINTIFF'S
MOTION TO ENFORCE SUBPOENA
AGAINST NON-PARTY PATRICIA BALL
AND TO COMPEL THE PRODUCTION
OF DOCUMENTS WITHHELD FROM
PRODUCTION IN DISCOVERY AND IN
RESPONSE TO SUBPOENA**

I. INTRODUCTION

The Court's current finding provides for a blanket work product privilege covering in excess of two hundred (200) emails and attachments and other correspondence without requiring the City of Sun Valley and Patricia Ball to prove that each withheld document actually qualifies for protection. Just because a party claims that something is privileged does not mean that it is. There is a burden of proof that such a party bears. It begins with Rule 26(b)(5)(A) of the Idaho Rules of Civil Procedure:

When a party withholds information otherwise discoverable under these rules by claiming it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(I.R.C.P. 26(b)(5)(A)).

The City of Sun Valley and Ms. Ball's privilege log does not meet this most minimum of burdens. The privilege log leaves Ms. Hammer and this Court without the information necessary to ascertain whether the materials withheld actually qualify for a privilege. Just because correspondence is exchanged between counsel or counsel and an agent of a party does not automatically mean that a privilege applies. Even if a privilege does apply, it may not apply to an entire document. The Court's denial of the Motion to Compel does not address this. The City and Ms. Ball's counsel, Mr. Naylor, stated that the materials involved counsel and were privileged, and the Court accepted Mr. Naylor's statement as meeting the City and Ms. Ball's burden of proof. Neither the City, Ms. Ball, Mr. Naylor, nor the privilege log identify the nature of the documents being withheld. The privilege log only identifies the documents withheld as emails. The subject matters or the nature of those emails are not addressed. At best, the documents withheld are categorized on the privilege log as falling within one of three categories: "factual request," "investigation administration," or "subpoena regarding investigation." Notably absent is any reference to litigation, legal advice, legal strategy, or anything of the sort. "Factual request," "investigation administration," or "subpoena regarding investigation" are not the type of descriptions that qualify for attorney-client communications or the work product privilege. This is particularly true where facts are not privileged and neither is evidence of what

a person or persons did to carry out an investigation.¹ Such matters are not communications in furtherance of the provision of legal advice or strategy communications containing mental impressions in anticipation of, or as part of, litigation.

The Court's decision also assumes that the undescribed materials withheld were done in anticipation of litigation, even though Former Mayor Willich – the only authorized representative to speak on such matters at the time for the client, the City – submitted testimony that states otherwise. Usually, it is the client demanding protections exist. Here, the one person who could claim the protections at that time on behalf of the City is actually arguing that no privileges existed. Yet, the Court has – without evidence to support the finding – found otherwise by drawing inferences and making assumptions. The party claiming a privilege is not entitled to inferences and assumptions. The party claiming the privileges is required to present direct evidence that each element of the claimed privilege exists.

After drawing inferences and making assumptions in order to find that the materials withheld are privileged, the Court appears to have engaged in a “hardship to Ms. Hammer” test. As part of that analysis, the Court concludes that Ms. Hammer is not entitled to Ms. Ball's investigatory notes of interviews with witnesses and that Ms. Hammer can go interview all of the witnesses that Ms. Ball interviewed. There is no evidence of record that the materials withheld are notes of interviews with witnesses. It is not clear how the Court arrived at that conclusion. Respectfully, it cannot be determined whether Ms. Hammer would face a hardship or not until and unless the City describes what it is withholding, as Rule 26 requires. Even then, without reviewing the materials first-hand, the Court cannot know whether Ms. Hammer could obtain that information from another source.

¹ *Upjohn Co. v. United States*, 449 U.S. 383, 396, 101 S. Ct. 677, 688 (1981); *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 603 (8th Cir. 1978).

Ms. Hammer appreciates that this case may not be popular with the Court. She also appreciates that reviewing over 200 documents to ascertain whether they qualify for a privilege in whole or in part may be burdensome, but she respectfully requests that the Court do so or that it appoint a special master to do so on the Court's behalf.

II. ARGUMENT

A. A Blanket Work Product Privilege Does Not Satisfy The City and Ms. Ball's Burden of Proof

The materials at issue in this motion to compel were withheld on claims of attorney-client privilege and the attorney work product doctrine.² This Court denied Ms. Hammer's Motion to Compel, finding that everything withheld by the City and Ms. Ball was subject to the attorney work product doctrine: "Because this Court finds that the materials sought in the subpoena are protected by the work product doctrine, the Plaintiff's Motion is denied."³

The party asserting the work product privilege bears the burden of establishing all of its elements on a document-by-document basis:

In sum, a proper analysis as to the withheld documents must be conducted on a document by document basis. If the document would not have been generated 'but for' litigation, it is privileged. However, if it was generated for purposes other than litigation, even though litigation may have been a 'real possibility', it must be disclosed.

United States v. Torf (In re Grand Jury Subpoena), 350 F.3d 1010, 1018 (9th Cir. 2003). "As with the attorney-client privilege, the person asserting the work product privilege cannot make a blanket assertion of the privilege, but must state document-by-document what information the privilege applies." *Buckner v. United States*, 1995 U.S. Dist. LEXIS 14107 (D. Idaho 1995)

² See Ex. D to Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena and Motion to Compel ("Aff. of Counsel"), Defendants' Privilege Log.

³ Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel ("Mem. Decision"), p. 2.

citing *United States v. Bornstein*, 977 F.2d 112, 115 (4th Cir. 1992). The proponent work of the product doctrine privilege must prove that the documents or correspondences at issue were prepared or made in anticipation of, or in regard to, litigation. In *Jordan v. United States Dept. of Justice*, the U.S. Court of Appeals for the District of Columbia stated: "The work-product rule does not extend to every written document generated by an attorney; it does not shield from disclosure everything that a lawyer does. Its purpose is more narrow, its reach more modest." *Jordan v. United States Dept. of Justice*, 591 F.2d 753, 775 (D.C. Cir. 1978).

It is clear from this statement that the purpose of the privilege is to encourage effective legal representation. Within [sic] the framework of the adversary system by removing counsel's fears that his thoughts and information will be invaded by his adversary. In other words, the privilege focuses on the integrity of the adversary trial process itself and seeks to ensure that such proceedings do not degenerate into mere "battles of wits." This focus on the integrity of the trial process is reflected in the specific limitation of the privilege to materials "prepared in anticipation of litigation or for trial."

Id. (citations omitted.)

Appreciating that this Court has cited to threats of litigation that ran contemporaneously with Ms. Ball being hired, the Court cannot overlook the fact that Ms. Ball was hired to determine whether employment disciplinary action should be taken against Ms. Hammer. Ms. Ball's retainer agreement ("fact-finding investigation") and Former Mayor Willich's affidavit both state as much:

16) At no time during either the November 11, 2011 or the November 14, 2011 executive sessions of the Sun Valley City Council was there any discussion of using the Hammer Disciplinary Investigation in regards to any potential or threatened litigation. At no time during either the November 11, 2011 or November 14, 2011 executive sessions of the Sun Valley City Council was there any discussions of the Hammer Disciplinary Investigation being commenced to work with the Blaine County Prosecutor's office to participate in a criminal investigation. The direction that I received from the Sun Valley City Council at the November 14, 2011 executive session was solely to perform a disciplinary investigation related to Former Administrator Hammer, solely for internal Sun Valley purposes.

(Sept. 19, 2013 Affidavit of Wayne Willich, ¶ 16.) Former Mayor Willich's testimony is that of the client – the City. Idaho Code § 50-602, related to the powers and authorities of a mayor in Idaho, states in relevant part:

The mayor ... shall be the chief administrative official of the city,
... have the superintending control of *all the officers and affairs
of the city*, (Emphasis added.)

Former Mayor Willich, as the client, is telling this Court that the assertion of the work product doctrine is a sham because the subject materials were not because of or in relation to litigation. At least until January 3, 2012, when Former Mayor Willich's tenure as Mayor of Sun Valley ended, Investigator Ball, City Attorney King and Attorney Naylor all reported solely to Former Mayor Willich, and Former Mayor Willich had sole authority over the purpose and direction of the Hammer Disciplinary Investigation. And, he is stating that it was not litigation related.

The Court should also recognize the specific language of the Sun Valley City Council resolution of November 14, 2011 (the "Authorizing Resolution"), which authorized the Hammer Disciplinary Investigation, which simply states:

Council member Bob Youngman moved to authorize the Mayor to engage an attorney to conduct an independent investigation.⁴

⁴ Affidavit of Wayne Willich, ¶¶ 13-24.

No other Sun Valley City Council action was thereafter taken in regard to the Hammer Disciplinary Investigation, or which limited Former Mayor Willich's right to conduct the Hammer Disciplinary Investigation as he saw fit. The Authorizing Resolution clearly indicated that, in conformance with Idaho Code § 50-602, the Sun Valley City Council recognized that it was Former Mayor Willich's sole responsibility to conduct the Hammer disciplinary Investigation, and to hire Investigator Ball, without any conditions attached to such activities.

While the Court concludes that Ms. Ball was subsequently advised by unidentified City officials that her new legal contact was Mr. Naylor, there is no evidence or testimony that what Ms. Ball was doing would not have been done but for litigation. Not even the City and Ms. Ball's privilege log supports such a conclusion. The privilege log in no way supports the conclusion that her communications with anyone contained mental impressions or legal strategies because of or in anticipation of litigation. Indeed, the privilege log states, only, that the withheld materials fall within three categories that are anything but. The privilege log states the withheld documents are: "factual request," "investigation administration," or "subpoena regarding investigation." Notably absent is any reference to litigation, legal advice, legal strategy, or anything of the sort. Moreover, there has been no showing that Ms. Ball's withheld materials were for any purpose other than the preparation of her reports.

Communications about the process (*i.e.*, "factual request," "investigation administration," or "subpoena regarding investigation") in which Ms. Ball was engaged to prepare those reports is not work product. *In re LTV Securities Litigation*, 89 F.R.D. 595, 603 (N.D. Tex. 1981) ("terms and conditions of an attorney's employment, the purpose for which an attorney has been engaged, [and] the steps which an attorney took or intended to take in discharging his obligation" not protected); *In re Walsh*, 623 F.2d 489, 494, cert. denied sub nom. *Walsh v. United States*, 449

U.S. 994 (1980) (recognizing general rule that matters involving receipt of fees from clients are not protected); *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 603 (8th Cir. 1977) ("The memorandum contained no confidential information. It did little more than reveal the relationship between the parties, the purpose for which Law Firm had been engaged, and the steps which the Firm intended to take in discharging its obligations to Diversified. Such a document is not privileged."); *Nguyen v. Excel Corp.*, 197 F.3d 200, 206 (5th Cir. 1999) (although "inquiry into the substance of the client's and attorney's discussions does implicate the privilege," "inquiry into the general nature of the legal services provided by counsel does not necessitate an assertion of the privilege because the general nature of services is not protected by the privilege."); *Valenti v. Allstate Ins. Co.*, 243 F.Supp.2d 200, 218 (U.S. M.D. Pa. 2003) ("Actual circumstances of the attorney-client relationship remain discoverable, even when the underlying communications itself may be privileged. ... The facts of legal consultation or employment, client identities, attorney's fees and the scope and nature of employment are not deemed privileged."); *Oasis International Waters, Inc. v. United States*, 110 Fed. Cl. 87, 100 (U.S. Ct. Cl. 2013) ("Courts have consistently held that the general subject matters of clients' representations are not privileged. Inquiry into the general nature of the legal services provided by counsel does not necessitate an assertion of the privilege because the general nature of services is not protected. ... The fact of legal consultation is not privileged because it does not directly reveal the substance of a client's request for legal advice.")

Although Ms. Hammer was not privy to the emails and other communications submitted to the Court *in camera*, there is no question that the Court relied on these communications to make its finding as to the relationship between Ms. Ball, Mr. Naylor, City Attorney King and Sun Valley, the scope of work to be performed, the directions as to who was to perform work

and when, none of which is covered by any privilege. For example, the Court states “email communications provided *in camera* contradict Mr. Willich’s assertion that he gave Ms. Ball no authority or direction to modify the “Final Ball Report” in any manner after December 12, 2011.” As the *in camera* communication the Court relied on for this finding clearly related to the description of the work that was to be performed by Ms. Ball (and/or others), and presumably did not include legal advice, legal strategy, or attorney mental impressions, this communication itself should have been disclosed to Ms. Hammer, rather than provided secretly *in camera* to the Court without Ms. Hammer being able to address what it may have stated.

It is also problematic that the Court allowed both City Attorney King and Ms. Ball to submit Affidavits which describe their duties, as well as Mr. Naylor’s duties, in regard to the Hammer Disciplinary Investigation, and yet allow other documents discussing those same roles and duties to, somehow, be privileged. Once City Attorney King and Ms. Ball openly discussed their roles and duties, and the role and duties of Attorney Naylor, in their own Affidavits, any and all correspondences related to the roles and duties of either Ms. Ball, City Attorney King or Mr. Naylor should have been subject to disclosure.

Although Former Mayor Willich has not reviewed the emails or communications at issue, his recollection of communications with Ms. Ball had to do with the duties Ms. Ball was to perform, the scheduling of the interviews in the Hammer Disciplinary Investigation, when Investigator Ball would complete her written report, and other administrative matters. (See Supplemental Affidavit of Wayne Willich (“Willich Supp. Aff.”), ¶ 8.) And, Former Mayor Willich denies that any of the correspondences he sent sought legal advice or discussed any matters related to the Hammer lawsuit with Ms. Ball. (Willich Supp. Aff., ¶ 8.) Former Mayor Willich also denies that any of the communications he received from either Ms. Ball, City

Attorney King, or Mr. Naylor provided any legal advice or related to the Hammer lawsuit. (Willich Supp. Aff., ¶ 8.) Former Mayor Willich notes that, as is described in his prior Affidavit in the matter, after ICRMP refused his request to provide an attorney other than Attorney Naylor to defend the Hammer lawsuit, Former Mayor Willich specifically instructed Attorney Naylor that he was to have no part in the Hammer Disciplinary Investigation, other than to be able to receive the report produced by Investigator Ball at the end of the Hammer Disciplinary Investigation. (Willich Supp. Aff., ¶ 13.) Former Mayor Willich also confirms that he never provided Investigator Ball with any authority to even contact Attorney Naylor or discuss the Hammer Disciplinary Investigation with Attorney Naylor. (Willich Supp. Aff., ¶ 13.)

Former Mayor Willich goes on to specifically deny the Court's conclusion that "Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation." (Willich Supp. Aff., ¶ 14.) Although Mr. Naylor, City Attorney King, Ms. Ball, and Mayor Elect Briscoe may have retroactively asserted that Ms. Ball was retained in regard to litigation or the Hammer lawsuit, there is no question that when Former Mayor Willich retained Ms. Ball, it was solely to assist Former Mayor Willich in making his decision whether or not to discipline Ms. Hammer. (Willich Supp. Aff., ¶ 14.) Former Mayor Willich also testifies that he mandated that the written report shown to Former Mayor Willich at City Attorney King's office on December 12, 2011, be kept at City Attorney King's office, in large part *so that it could not be used by Attorney Naylor in the defense of the Hammer lawsuit* because of its multiple flaws, errors and erroneous and unauthorized conclusions. (Willich Supp. Aff., ¶ 14.)

Given Former Mayor Willich's testimony and this Court's own finding upon review of the *in camera* documents, Ms. Hammer asks the Court to reconsider a blanket privilege waiver.

At a minimum, the documents reviewed by the Court appear to be subject to at least redacted production so as to preserve any actual work product contained therein. It would also be prudent for the Court to review the rest of the approximately 200 documents being withheld which the City and Ms. Ball describe as "factual request," "investigation administration," or "subpoena regarding investigation." If the documents do not contain legal advice, legal strategy, or mental impressions, they should be produced. If they contain such information in part, then the documents should be produced in redacted form to protect only the qualifying portions.

B. Former Mayor Willich Should Be Permitted to Comment on the Documents Relied Upon by This Court and the Documents Being Withheld

In his Supplemental Affidavit, Former Mayor Willich calls into question the authenticity of the documents reviewed by the Court. Former Mayor Willich should be permitted to review the documents that the Court reviewed *in camera* in order to respond to the same. Former Mayor Willich should also be permitted to review any and all emails and attached materials that were sent to him or sent by him. Allowing Former Mayor Willich to review the documents will not waive any privilege as he was the person who could speak for the client at the time the purported privilege arose.

It is noteworthy that Former Mayor Willich is trying to prevent this Court from being misled. He is not trying to assert the privilege in an attempt to cover up facts or to mislead the Court. He wants the truth to be known. He has personal knowledge that someone within the City forged his initials and/or signature on financial documents. (Willich Supp. Aff., ¶ 20.) In addition, based on Former Mayor Willich's personal history with Mr. Naylor, Former Mayor Willich does not trust Mr. Naylor to provide truthful information to the Court. (Willich Supp. Aff., ¶ 20.) The Court cannot take lightly Former Mayor Willich's concerns about the credibility of the communications that were purportedly sent by, or to, Former Mayor Willich. The Court

also cannot take lightly that Former Mayor Willich asserts that if he did send or receive any of the emails at issue, the emails were in regard to what duties Ms. Ball was to perform, the scheduling of the interviews in the Hammer Disciplinary Investigation, when Investigator Ball would complete her written report, and other administrative matters. (Willich Supp. Aff., ¶ 8.) Former Mayor Willich denies that any of the correspondences he may have sent to or received from either Ms. Ball, City Attorney King or Mr. Naylor included legal advice, legal strategies, or any matters related to the Hammer lawsuit. (Willich Supp. Aff., ¶¶ 8, 9.) Former Mayor Willich notes that, as is described in his prior Affidavit in the matter, after ICRMP refused his request to provide a different attorney than Attorney Naylor to defend the Hammer lawsuit, Former Mayor Willich specifically instructed Attorney Naylor that he was to have no part in the Hammer Disciplinary Investigation, other than to be able to receive the report produced by Investigator Ball at the end of the Hammer Disciplinary Investigation. (Willich Supp. Aff., ¶ 13.) Former Mayor Willich also confirms that he never provided Investigator Ball with any authority to even contact Attorney Naylor or discuss the Hammer Disciplinary Investigation with Attorney Naylor. (Willich Supp. Aff., ¶ 13.)

Former Mayor Willich goes on to specifically deny the Court's conclusion that "Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation." (Willich Supp. Aff., ¶ 14.) Although Attorney Naylor, City Attorney King, Investigator Ball and Mayor Elect Briscoe may have retroactively asserted that Investigator Ball was retained in regard to litigation or the Hammer lawsuit, there is no question that when Former Mayor Willich retained Investigator Ball, it was solely to assist Former Mayor Willich in making his decision related to whether to discipline Ms. Hammer or not. (Willich Supp. Aff., ¶ 14.) Former Mayor Willich notes that the Court's finding also

ignores the fact that Former Mayor Willich mandated that the written report shown to Former Mayor Willich at City Attorney King's office on December 12, 2011, be kept at City Attorney King's office, in large part *so that it could not be used by Attorney Naylor in the defense of the Hammer lawsuit* because of its multiple flaws, errors and erroneous and unauthorized conclusions. (Willich Supp. Aff., ¶ 14.)

Ms. Hammer respectfully requests that this Court allow Former Mayor Willich to review the withheld and *in camera* materials so that he, and counsel of his choosing, can ascertain whether documents are being improperly shielded, or are actually subject to protection. Such a review would be prudent in addition to an *in camera* review by the Court (or Special Master).

C. The Waiver Was Broader Than the Court Recognized

The Court's conclusion on a lack of waiver focuses, only, on the release of the Unauthorized Ball Report to the Blaine County Prosecutor. The Court does not address that the Unauthorized Ball Report was published for a year in the on-line section of the *Idaho Mountain Express* newspaper, and that several articles were written about the Unauthorized Ball Report and the Hammer Disciplinary Investigation in the *Idaho Mountain Express* and the *Boise Weekly* newspapers. Ms. Hammer could understand the Court's ruling if the Court found that the only person who the Unauthorized Ball Report was released to was the Blaine County Prosecutor, who thereafter kept it confidential. However, for the Court to assert that no waiver resulted in all matters associated with the Hammer Disciplinary Investigation due to the publishing of the Unauthorized Ball Report, *literally globally, to millions of persons*, cannot be accurate.

As the Court noted:

Under the federal rule, work product protection is only waived when fairness requires, and is limited to the subject matter of the related disclosure, and does not create a blanket waiver of the work product privilege in the entire case. *Hernandez v. Tanninen*, 604

F.3d 1095, 1100-01 (9th Cir. 2010). “[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject.”

(Mem. Opinion, pp. 8-9, citing *Weil v. Investment Indicators, Research & Mgmt., Inc.*, 647 F. 2d 12, 23 (9th Cir. 1981). It is not conceivable that the entire contents of Ms. Ball’s report could be publically released and yet that does not constitute a waiver of any privilege as to all other such communications on the same subject. Again, according to the City and Ms. Ball’s privilege log, the materials being withheld relate directly to the report and, on their face, relate to the process that she engaged in in producing the report. The City and Ms. Ball describe the materials as falling into one of three categories: “factual request,” “investigation administration,” or “subpoena regarding investigation.”

III. CONCLUSION

For the foregoing reasons, Ms. Hammer respectfully requests that the Court reconsider its denial of her Motion to Enforce Subpoena and Motion to Compel. Ms. Hammer requests the relief identified herein and in her Motion for Reconsideration.

DATED this 13th day of February, 2014.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

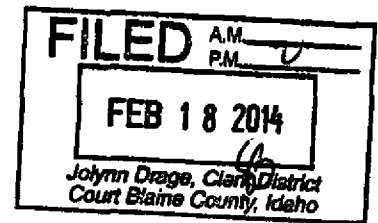
Kirtlan G. Naylor
NAYLOR & HALES, P.C.
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The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

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ERIC B. SWARTZ
JOY M. VEGA



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2012-479

**MEMORANDUM DECISION
DENYING MOTION TO
RECONSIDER**

BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendants, the City of Sun Valley, Nils Ribi, and DeWayne Briscoe. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendants for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA").

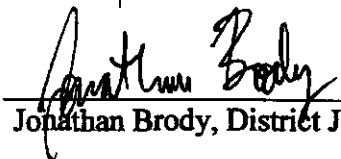
The Plaintiff filed a Motion to Reconsider, seeking reconsideration on the previously decided Motion for Summary Judgment. The Motion to Reconsider was argued before this Court on January 21, 2014. For the reasons stated on the record, this Court denied the Plaintiff's Motion to Reconsider.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion to Reconsider is hereby DENIED.

IT IS SO ORDERED

Dated: 2/14/14

Signed: 
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 19 day of FEB, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: **MEMORANDUM DECISION DENYING MOTION TO RECONSIDER** to each of the persons as listed below:

Eric B. Swartz
Jones & Swartz PLLC
1673 W. Shoreline Drive, Suite 200
Boise, Idaho 83707
Fax: 208-489-8988

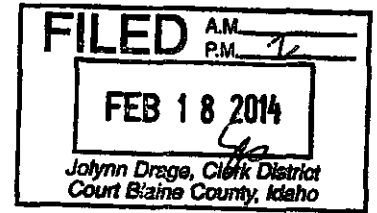
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☐ Via Facsimile

CLERK OF THE DISTRICT COURT

BY: 
Crystal Rigby
Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2012-479

MEMORANDUM DECISION
DENYING MOTION TO AMEND

BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendants, the City of Sun Valley, Nils Ribí, and DeWayne Briscoe. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendants for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA").

The Defendants brought a Motion to Amend, seeking to amend the caption of the case. The Motion to Amend was argued before this Court on January 21, 2014. For the reasons stated on the record, this Court denied the Defendants Motion to Amend.

CONCLUSION

For the foregoing reasons, the Defendants Motion to Amend is hereby DENIED.

IT IS SO ORDERED

Dated: 2/14/14

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 19 day of FEB, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: **MEMORANDUM DECISION DENYING MOTION TO AMEND** to each of the persons as listed below:

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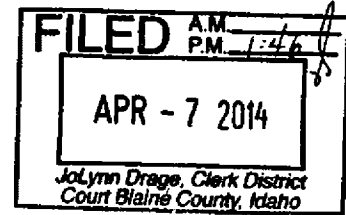
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CLERK OF THE DISTRICT COURT

BY: 
Crystal Rigby
Deputy Clerk

Kirtlan G. Naylor [ISB No. 3569]
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION TO DENY
PLAINTIFF'S MOTION TO COMPEL**

Defendant, the City of Sun Valley, by and through its counsel, Naylor & Hales, P.C., hereby submit this *Opposition to Plaintiff's Motion For Reconsideration to Deny Plaintiff's Motion to Compel*. Plaintiff's dogged attempts at seeking Ms. Ball's work product material is an apt illustration of the proverb, "If at first you don't succeed¹, try², try³, try⁴ again." In her latest

¹See Order Granting Defendant's Motion to Quash, October 17, 2012, *Ribi v. Donoval* (Blaine County Case No. CV-2011-1040)

²See Plaintiff's Motion for Reconsideration (Motion to Quash Patricia Ball Subpoena), November 5, 2012, *Ribi v. Donoval* (Blaine County Case No. CV-2011-1040), and all accompanying briefing and affidavits.

³See Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld From Production in Discovery and In Response
OPPOSITION TO MOTION FOR RECONSIDERATION TO ENFORCE SUBPOENA - 1

bid, Plaintiff repeats erroneous legal argument supported by bad case law, brings issues before the Court that have never been raised through any meet and confer, questions the integrity and motives of the Court, and ultimately relies again upon another one of Mr. Willich's affidavits. Interestingly, all of these issues could have been raised in Plaintiff's reply or at the oral argument held in the prior motion to compel, but were ignored by Plaintiff until the Court denied her motion. Plaintiff's current legal arguments are simply repeated from her prior motions notwithstanding the Court's prior rulings on the same arguments. Reconsideration is improper and Defendant requests attorney fees and costs for having to defend against this frivolous motion.

The Court correctly determined in its prior ruling that "there is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation," and subsequently "the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3)." (January 17, 2014 *Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel*, p. 6-7) This includes any communications made by Ms. Ball in performing her investigation. (*Id.* at 7) Additionally, any waiver of the work product protection is not a blanket waiver of all documents or communications in relation to that waived document. (*Id.* at 9) Nothing Plaintiff has raised in her current motion for reconsideration affects the Court's prior ruling. However, Defendant will still address Plaintiff's arguments for reconsideration to, hopefully, dissuade Plaintiff from any further motions brought about from misunderstanding the applicable doctrines.

to Subpoena, November 4, 2013, current action, and resulting Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel, January 23, 2014.

⁴Plaintiff's currently pending Motion for Reconsideration.

OPPOSITION TO MOTION FOR RECONSIDERATION TO ENFORCE SUBPOENA - 2

Defendants do not have the burden of establishing all elements of work product protection by a document-by-document basis as Plaintiff alleges. Idaho has never established that it has adopted the “but-for” standard. Frustratingly, Plaintiff still cites to the overruled *United States v. Torf (In re Grand Jury Subpoena)*, 350 F.3d 1010, 1018 (9th Cir. 2003), as basis for her “but for” standard of the work product protection. As pointed out previously in Defendants briefing, this case has been directly overturned on the exact point of law for which Plaintiff cites it, and the Ninth Circuit has adopted the more permissive “because of” standard. See *In re Grand Jury Subpoena (Mark Torf/Torf Ervtl. Mgmt.)*, 357 F.3d 900, 908 (9th Cir. 2004) (*Torf*).

The “because of” standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the “document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]”

* * *

The question of entitlement to work product protection cannot be decided simply by looking at one motive that contributed to a document's preparation. The circumstances surrounding the document's preparation must also be considered.

Id. (citations omitted) (emphasis added). The Court has already determined, multiple times, that Ms. Ball’s investigation was performed in anticipation of litigation. There is no credible new fact or legal argument that Plaintiff has submitted that contradicts the Court’s previous ruling. For Plaintiff to continually rely on bad case law to support her assertion of the “but for” litigation standard is the definition of frivolity and should be a reason for awarding costs and fees to Defendant in having to defend against this motion.

Plaintiff also still ignores the distinction between the attorney-client privilege and the work product doctrine. Plaintiff continues to inappropriately mix the standard for each, thus

OPPOSITION TO MOTION FOR RECONSIDERATION TO ENFORCE SUBPOENA - 3

suggestion the standards are interchangeable. (*See Plaintiff's Memorandum in Support of Motion for Reconsideration*, p. 7-8) This argument is not supported by case law. Plaintiff uses the legal analysis for attorney client privilege to argue that Ms. Ball's communications were not protected as work product. These are not interchangeable doctrines.

Plaintiff also repeats her argument that publication of portions of the findings from two of Ms. Ball's three reports in the online *Idaho Mountain Express*, is a "global" waiver of any and all documents and communications from her investigation. Even with a publication waiver, though, and as argued extensively by Defendants in prior briefing, waiver of the work product protection is not the same as voluntary disclosure of privileged attorney communication, and waiver of any work product documents only waives those documents themselves. What Plaintiff continually fails to acknowledge is that online publication of the Ball Report was limited to these limited findings sections of the reports, found in pages Ball 1-29, and Ball 343-348.⁵ The remainder of the findings from each report and their accompanying exhibits, or pages Ball 30-342, and Ball 348-354, have never been publically published or available. Plaintiff has never produced conclusive evidence that the reports, in their entirety with exhibits were ever "globally" published or disclosed.

Plaintiff now, for the first time, objects to Defendant's privilege log produced on June 24, 2013, in order to support her argument for reconsideration. Plaintiff has never raised this objection through any meet-and-confer attempt during the past eight months. (*See Affidavit of*

⁵ These publications are still available online. Pages Ball 1-29, or the findings of one of the reports, are publically available at "<http://mtexpress.com/pdf/pattyball.pdf>" and pages Ball 343-348, the findings of a different report, are publically available at "<http://mtexpress.com/pdf/pattyball2.pdf>". Additionally, as evident in those pages online, even those portions were redacted and so there has never been any full publication of any of the reports.

Eric Swartz in Support of Motion to Enforce Subpoena, Ex. 6-11) Thus, the Court should disregard Plaintiff's objection. Regardless of this procedural shortcoming, the merits of Plaintiff's objection to the privilege log are unconvincing. Plaintiff argues the attorney-client privilege applies to only specific and individual statements of communications that "include legal advice, legal strategy, or attorney mental impressions," and that Defendant's privilege log does not indicate these specific determinations. This is an unsound interpretation of the attorney-client privilege when viewed in the plain language of I.R.E. 502(b) and I.R.C.P. 26(b)(3). The Court previously, and correctly, cited to I.R.E. 502(b) which establishes that the attorney-client privilege stands to protect communications, "made for the purpose for facilitating the rendition of professional legal services to the client. . ." (emphasis added) The privilege log accurately details emails that are either a) communications made by Ms. Ball that are described briefly, but clearly, as pertaining to her investigation and therefore protected as work product, or they are b) communications made between Ms. Ball and various attorneys representing Defendant in the facilitation of the rendition of professional legal services that, as Ms. Ball was an agent of the city, would then be doubly protected as work product and as attorney-client communications.

Plaintiff additionally argues that attorneys who state facts regarding the general representation of their clients and the general scope of that representation somehow waive all documents and communications which further specify that representation and scope: "Once City Attorney King and Ms. Ball openly discussed their roles and duties, and the role and duties of Attorney Naylor, in their own affidavits, any and all correspondences related to the roles and duties of either Ms. Ball, City Attorney King, or Mr. Naylor should have been subject to disclosure." Oddly, the case law that Plaintiff cites in her own memorandum does not even support this incorrect legal conclusion. *See Oasis International Waters, Inc. v. United States*,

110 Fed. Cl. 87, 100 (U.S. Ct. Cl. 2013). Additionally, this is a disingenuous waiver argument by Plaintiff, as the only reason why the general representation of Attorneys King and Naylor is being discussed at all is because Plaintiff has openly questioned this representation supported by Mr. Willich's questionable affidavits.

Defendant understands that Mr. Willich keeps repeating that he believes the clearly threatened litigation had no influence on Ms. Ball's investigation. However, Mr. Willich's sole opinion, although incessant, is subject to determinations of credibility and plausibility by the Court. The Court has previously held that the evidence before it supports that Ms. Ball's investigation was conducted in contemplation of potential litigation, and that Mr. Naylor and Mr. King were authorized to participate in this investigation. (January 14, 2014 *Order*, p. 9) Further, while Mr. Willich has offered yet another affidavit in support of Plaintiff's motion, neither this latest affidavit nor any of Plaintiff's argument has addressed the myriad of factual inconsistencies highlighted in Defendant's previous briefing, which ultimately undermine Mr. Willich's credibility as to any of his statements sworn under oath.⁶ (See *Defendant's Memorandum in Opposition to Plaintiff's Motion to Enforce Subpoena*, p. 5-11, 21-25) Mr. Willich's newest contradictory affidavit does not trump his older affidavits or sworn testimony which is now inconvenient to Plaintiff's latest legal theories. Plaintiff repeatedly argues that "[t]he Court cannot take lightly" Mr. Willich's various assertions of conspiracy and malfeasance. However, the Court may do just that in the light of more credible evidence before the Court, especially as Mr. Willich's credibility is suspect from his breadth of contradictory sworn statements and

⁶Mr. Willich, in his latest sworn affidavit, asserts that "I have previously filed an Affidavit in the matter herein, and stand on the veracity and truthfulness of the statements made under oath in that Affidavit." (¶ 2) Conspicuously absent is any review or assertion of veracity or truthfulness of any of Mr. Willich's other sworn statements or testimony cited by Defendant as contradictory, and is a tacit concession of those contradictions.

testimony.

Neither does one line from the Special City Council Meeting Minutes of November 14, 2011 (which Plaintiff characterizes as the "Authorizing Resolution") serve as immutable proof of the intent of the entire Sun Valley City Council in its motives for authorizing its investigation. The intent to have an investigation was clearly in part due to Mr. Donoval's threatened litigation, which intent was established by the previously submitted affidavits of Nils Ribi (¶¶ 9-10), Adam King (¶¶ 7-8), and Ms. Ball (¶¶ 3, 6). Plaintiff has produced no credible evidence to the contrary.

It is hard to understand why Plaintiff specifically requested the relief of an "in-camera" review of communications throughout her briefing only to subsequently belittle the Court's actual in-camera review of those communications, both through Mr. Willich's latest affidavit and through argument to the Court. Plaintiff, through her briefing, questions the Court's ability or desire to take the "burdensome" task of reviewing these communications and further questions the Court's impartiality in avoiding a case which "may not be popular with the Court." (*See Plaintiff's Memorandum in Support of Motion for Reconsideration*, p. 4) Plaintiff's briefing also states that the Court has "draw[n] inferences and mad[e] assumptions" "without evidence to support" its findings. (*Id.* at 3) Mr. Willich apparently finds the Court's actions as, "disturbing," (January 29, 2014 *Affidavit of Wayne Willich*, ¶¶ 5, 9, 15), "concern[ing]" (*Id.* at ¶ 15), "unacceptable and inaccurate," (*Id.*) and alleges that the Court "ignored" specific facts. (*Id.* at ¶¶ 14, 18) However, for having such strong feelings about the evidence now, it is interesting that neither Plaintiff nor Mr. Willich failed to contest these same issues raised by Defendant's evidence and argument during the motion to compel. Instead, Plaintiff felt it only important now in this subsequent motion for reconsideration, after seeing the Court's ruling. This is a waste of the Court and Defendant's time and resources.

Mr. Willich's "concern" with the Court's ruling is based on his alternative factual recollections of the emails sent in 2011 drawn from an analysis of the privilege log produced to Plaintiff by Defendant on June 24, 2013. However, Plaintiff had all of this evidence at least five months before she brought her motion to compel in November 2013. Mr. Willich never mentioned that the emails recorded in this log were questionable or "illegitimate" in his affidavit of September 19, 2013. It was not raised in any manner even after Defendant relied on these emails in its opposition briefing. Only after the Court relied, in part, on those emails submitted *in camera* for its decision did Plaintiff bring this motion for reconsideration with a new objection to a long produced privilege log and the latest affidavit of Mr. Willich suddenly calling into question all emails that might be detrimental to Plaintiff's legal position.

As irrefutable proof that any emails sent by Mr. Willich are not under privilege, Mr. Willich swears to alternative versions of the "truth" in order to remedy any adverse effects of the Court's prior ruling: Alternative A: Mr. Willich simply has no recollection of ever sending the emails. (January 29, 2014 *Affidavit of Wayne Willich*, ¶ 7) Alternative B: If those emails were in fact sent by Mr. Willich, then the topics were definitely and conclusively related to matters that Plaintiff has concurrently argued would be outside her interpretation of the attorney-client privilege. (*Id.* at ¶ 8) Regardless of the fact that "Former Mayor Willich has not reviewed the emails or communications at issue," (see *Plaintiff's Memorandum in Support of Reconsideration*, p. 9), he now clearly recalls the content of all the emails sent more than two years ago between himself and Ms. Ball, Mr. King, and Mr. Naylor. However, there is another option, unmentioned by Plaintiff or Mr. Willich, Alternative C: that Mr. Willich actually sent the emails as written. In failing to acknowledge Alternative C, Plaintiff and Mr. Willich's seemingly assert that every single email purporting to be sent from Mr. Willich to Ms. Ball is suspect in some way. Mr.

Willich makes a similar statement regarding communications to Mr. King and Mr. Naylor, stating that he never sought legal advice from either of them in any correspondences. (January 29, 2014 *Affidavit of Wayne Willich*, ¶ 8) Mr. Willich's new affidavit is not supported by the evidence before the Court, nor by common sense.

In addressing emails allegedly sent to Mr. Willich from other parties, emails which again, he admittedly has never actually reviewed or seen, he also swears to multiple versions of the "truth": either he never opened them, they may have been blocked by a spam program, he never read them, or he read them "but refused to respond." (January 29, 2014 *Affidavit of Wayne Willich*, ¶ 9) (emphasis added). Again, the most obvious version—that Mr. Willich received, read, and responded to emails certified by other parties—is not a suggested possibility to any of the emails in question. Mr. King and Mr. Naylor also allegedly never sent any legal advice to Mr. Willich, or he just never read any such communications. And again, these assertions defy not only the evidence before the Court, but common sense.

Plaintiff apparently hopes that having Mr. Willich raise new and assorted allegations—unsupported by anything than his current testimony and contradicted by his past testimony—that Mr. Willich will be allowed to participate in the *in camera* review of any communications, and allow Mr. Willich an opportunity to "explain" himself further.⁷ What Mr. Willich is actually requesting is the equivalent of a "take-home exam," where he and "an attorney of [his] choice,"

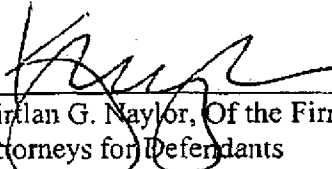
⁷Upon order of the Court, Defendant would be willing to provide any and all communications for further *in camera* review. However, Defendant objects to Plaintiff or Mr. Willich's informal demands to participate in any review of documents submitted to the Court for *in camera* review. Contrary to Plaintiff's assertions, allowing Mr. Willich to view the *in camera* documents would in fact waive any privilege to them, as Plaintiff has provided no legal basis as to Mr. Willich's current authority because he is no longer is an elected official. Additionally, he has demonstrated through his cooperation with Plaintiff that he is an adverse party to the City of Sun Valley.

will be able to do exactly what they have done with the Court's other rulings: manipulate or attempt to discredit the documented truth in a targeted way in order to have a preferable outcome for Plaintiff.

Defendant has had to repeatedly respond to erroneous legal arguments and an ever changing (and contradictory) factual narrative presented by Plaintiff. Defendant requests not only that the Court deny Plaintiff's frivolous motion for reconsideration, but that it impose costs and fees pursuant to I.R.C.P. 37(a)(4) to Defendants in light of having to respond, yet again, to the same legal arguments and another of the continuing and contradictory affidavits of Mr. Willich.

DATED this 7th day of April, 2014.

NAYLOR & HALES, P.C.

By 
Kirilan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of April, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

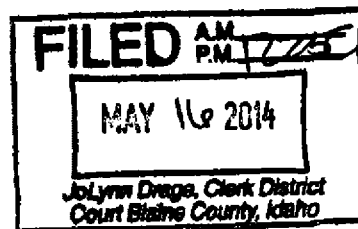
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Kirilan G. Naylor

8406_32 Defs' Opp Motion Reconsideration.wpd

OPPOSITION TO MOTION FOR RECONSIDERATION TO ENFORCE SUBPOENA - 10



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2012-479

MEMORANDUM DECISION
DENYING MOTION TO
RECONSIDER

**MEMORANDUM DECISION DENYING MOTION TO RECONSIDER
PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AND COMPEL**

BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendants, the City of Sun Valley, Nils Ribi, and DeWayne Briscoe. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendants for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA").

The Plaintiff filed a Motion to Reconsider, seeking reconsideration on the previously decided Motion to Enforce Subpoena and Compel. The Motion to Reconsider was argued before this Court on April 15, 2014. Sharon Hammer ("Plaintiff") brought a Motion to Enforce Subpoena against non-party Patricia Ball and to compel production of documents withheld from production in discovery and in response to subpoena. Ms. Ball and the Defendants, City of Sun Valley ("Sun Valley") opposed the Motion claiming that attorney-client privilege and attorney work product protections apply. Oral argument was heard on that matter on December 17, 2013. This Court found that the materials sought in the subpoena were protected by the work product doctrine, and the Plaintiff's Motion was denied. The Plaintiff then filed a Motion to Reconsider the Motion Enforce Subpoena and Compel, pursuant to I.R.C.P. 7(b)(1) and 11(a)(2)B), which was heard before this Court on April 15, 2014. For the following reasons the Motion to Reconsider is denied:

LEGAL STANDARD

I.R.C.P. 26(b)(1) permits broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is "reasonably calculated to lead to the discovery of admissible evidence." I.R.C.P. 26(b)(1). The burden of showing information is privileged, and therefore exempt from discovery, is on the party asserting the privilege. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04, 116 P.3d 27, 33-34 (2005) citing *Ex parte Niday*, 15 Idaho 559, 98 P. 845 (1908). I.R.E. 502(b) states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyer's representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client". I.R.E. 502(b). A communication is confidential where it is not intended to be disclosed to third parties, other than those third parties who are furthering the rendition of professional legal services to the client or who are necessary to transmit the confidential communication. I.R.E. 502(a)(5).

Furthermore, work product is generally immune from discovery. *See* I.R.C.P. 26(b)(3). Work product is considered "documents and tangible things otherwise discoverable... prepared in anticipation of litigation or for trial by or for another party or

by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent)..." *Id.* Work product can only become discoverable "upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.* Additionally, "[i]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation, including communications between the attorney and client, whether written or oral." *Id.*

DISCUSSION

In the Motion to Compel and Enforce Subpoena Sun Valley argued that the Motion to enforce the Plaintiff's subpoena should be denied because the subpoena seeks protected work product and material protected by the attorney-client privilege. The Plaintiff argued that the material sought was not protected by the attorney-client privilege and should not be considered work product.

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation "by or for another party or by or for that other party's representative...only upon a showing that the party seeking discovery has substantial need of the materials...and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." I.R.C.P. 26(b)(3). If discovery of such material is ordered, "the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

The Court found in the Motion to Compel and Enforce Subpoena, and further finds here, there is evidence in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. Aff. Ball, ¶ 5; Aff. King, ¶ 14. Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation. Aff. King, Ex. A, p. 5, Aff. King, ¶ 15, Aff. Ball, ¶ 5,7. Therefore, Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation.

This Court's previous finding is that the investigation was completed on December 20th, 2011. There have been new affidavits produced that create inconsistencies as to when the investigation was completed. However, there is not enough evidence that shows that this Court's previous finding that the investigation was completed on December 20th, 2011, was incorrect. As noted in this Court's previous ruling, e-mail communications provided *in camera* contradict Mr. Willich's assertion that he gave Ms. Ball no authority or direction to modify the "Final Ball Report" in any manner after December 12, 2011. K. Naylor Aff., Ex. B, SV IN CAMERA 57; Ex. L, ¶ 14. Furthermore, Plaintiff's previous affidavit states that Mr. Willich stated to her on December 16, 2011, "that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days." Aff. K. Naylor, Ex. G, ¶ 5. This further shows that Mr. Willich did not see the investigation as complete on December 12, 2011. This Court continues to find that for the purposes of this motion, Ms. Ball's investigation was complete on December 20, 2011.

Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party's representative.

As this Court previously noted, the work product doctrine protects disclosure of communications. *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). "Communications" are precisely what the Plaintiff seeks, essentially all documents generated in connection with Ms. Ball's disciplinary investigation. The Plaintiff is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. However, the Plaintiff is not entitled to copies, however recorded, of Ms. Ball's interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball's duty as an investigator. Furthermore, the Plaintiff is not entitled to the e-mails produced in accordance with the investigation. The Plaintiff can obtain the underlying facts obtained by Ms. Ball in these interviews through other discovery methods. Notably, at least portions of the report itself became publically available and Plaintiff has it.

It is possible under certain circumstances to waive the work product doctrine. If work product is disclosed, and that disclosure is to an adversary, the protection is lost. *Trustees of Elec. Workers No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1, 14-15 (D.C. Cir. 2010) (citations omitted). In this case, part of Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not

adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries. *See U.S. v. AT&T*, 642 F.2d 1285, 1300 (D.C. Cir. 1980) (MCI's disclosure of work product to the government, for the purpose of aiding in the investigation of MCI's opponent did not waive work product immunity). "While the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself [to waive protection of work product]." *Id.* at 1299. Since there has been no showing that Sun Valley disclosed its work product to an adversary, it has not waived protection of its work product.

As stated in this Court's decision on the Motion to Compel and Enforce Subpoena, the Plaintiff has not shown that Sun Valley has waived work product protection. The Plaintiff argues that Sun Valley has waived its attorney-client and work product privilege. While there is no direct Idaho case law on the issue, the Plaintiff cites to federal case law which analyzes a similar work product rule. Under the federal rule, work product protection is only waived when fairness requires, and is limited to the subject matter of the related disclosure, and does not create a blanket waiver of the work product privilege in the entire case. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100-01 (9th Cir. 2010). "[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject." *Weil v. Investment Indicators, Research & Mgmt., Inc.*, 647 F.2d 12, 23 (9th Cir. 1981). The Plaintiff attempts to argue that the voluntary waiver of a single document waives all communications presented in a case. However, this is not the case. Even a case cited by the Plaintiff states "[w]e conclude, then, that while the mere showing of a

voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself for waiver of the work product privilege.” *Permian Corp. v. United States*, 665 F.2d 1214, 1219 (D.C. Cir. 1981) citing *United States v. AT&T*, 642 F.2d 1285, 1299 (D.C.Cir.1980). Because Ms. Ball’s findings were disclosed to the Blaine County Prosecutor does not mean that waiver should be applied to all of Ms. Ball’s other communications. Furthermore, there has been no evidence produced by the Plaintiff that the Defendant has voluntarily disclosed any attorney-client communications between Mr. King and Mr. Naylor nor any of the work product currently not being disclosed. Therefore, the privileges remain. Lastly, Plaintiff’s argument that Mr. Naylor and Mr. King were unauthorized to participate in Ms. Ball’s investigation is not supported by the evidence in the record.

In the Motion to Reconsider, the Plaintiff has not shown that she cannot obtain the underlying facts through depositions, interrogatories, requests for production, or other discovery methods, nor has the Plaintiff shown either a substantial need for Ms. Ball’s materials, nor an undue hardship in attaining the substantial equivalent of these materials by other means, and again, the Plaintiff has the report itself. Because the Plaintiff has not met the burden under I.R.C.P. 26(b)(3), and this Court finds that Ms. Ball was retained in anticipation of litigation, and the materials she prepared were prepared in anticipation of litigation, those materials are protected. Because of this, there is no need to analyze whether those materials are protected from disclosure under the attorney-client privilege.

Defendant sought fees and costs pursuant to Rule 37(a)(4), which were previously denied without prejudice as stated in the prior ruling. No further argument was provided at the last hearing. Fees and costs for the original Motion to Enforce Subpoena and

Compel are denied. The Motion to Reconsider was not frivolous, concerned an important issue, and did provide the Motion a new affidavit. Thus, fees and expenses are denied.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion to Reconsider is hereby
DENIED.

IT IS SO ORDERED

Dated: 5/16/14

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 19 day of May, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: **MEMORANDUM DECISION DENYING MOTION TO RECONSIDER** to each of the persons as listed below:

Eric B. Swartz
Jones & Swartz PLLC
1673 W. Shoreline Drive, Suite 200
Boise, Idaho 83707
Fax: 208-489-8988

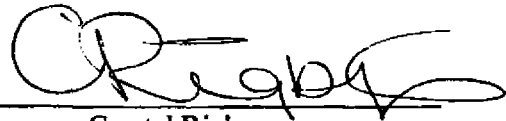
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Facsimile

Kirtlan G. Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702
Fax: 208-383-9516

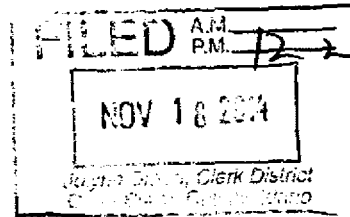
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Facsimile

CLERK OF THE DISTRICT COURT

BY:



Crystal Rigby
Deputy Clerk



Kirtlan G. Naylor [ISB No. 3569]

Jacob H. Naylor [ISB No. 8474]

Tyler D. Williams [ISB No. 8512]

NAYLOR & HALES, P.C.

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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DECLARATION OF SUSAN
ROBERTSON**

ORIGINAL

I, SUSAN ROBERTSON, declare under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen (18) and competent to testify to the matters herein. I make this declaration based upon personal knowledge.

2. I am the Sun Valley City Administrator and in that capacity I am a custodian of City Records, including the following. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff Sharon R. Hammer's "City Administrator Employment Agreement." (SV 61-66.) A

DECLARATION OF SUSAN ROBERTSON- 1

true and correct copy of Plaintiff's "City Administrator Employment Agreement Extension" is attached hereto as **Exhibit B** (SV 67-68). A true and correct copy of Plaintiff's "Supplemental Release Pursuant to City Administrator Employment Agreement" is attached hereto as **Exhibit C** (SV 387).

PURSUANT to Idaho Code § 9-1406 and Rule 7(d) of the Idaho Rules of Civil Procedure, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 14th day of November, 2014

Susan Robertson
SUSAN ROBERTSON

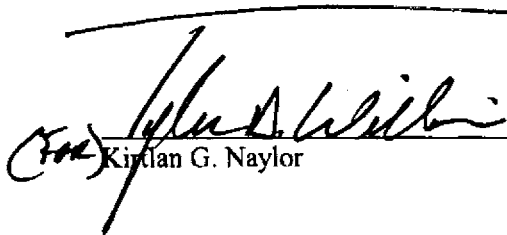
DECLARATION OF SUSAN ROBERTSON- 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of November, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

☐ U.S. Mail
☒ Hand Delivered
☐ Fax Transmission: 489-8988
☐ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com


Kirtlan G. Naylor

8406_34 Declaration of Susan Robertson MSJ.wpd

CONFIDENTIAL

ORIGINAL

**CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT**

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, without cause, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "cause", then Employer shall not be obligated to make any severance payment to Employee. "Cause" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee shall not be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, AND reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | | |
|-----|--------------------------|---|
| (1) | Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) | Employee:
[Temporary] | 360 W. Illinois St.
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion

**CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT EXTENSION**

This Employment Agreement Extension ("Extension") is made and entered into as of this 17th day of September 2009, by and between the City of Sun Valley, State of Idaho, a municipal corporation, hereinafter referred to as "Employer" and Sharon R. Hammer hereinafter referred to "Employee," collectively known as the "Parties," is made in contemplation of the following:

RECITALS

WHEREAS, Employer and Employee are parties to the City Administrator Employment Agreement; and

WHEREAS, Employer and Employee wish to extend the original Employment Agreement effective June 1, 2008; and

WHEREAS, the Parties wish to amend the Employment Agreement as set forth in this Extension.

TERMS AND CONDITIONS

SECTION 1. TERM

The term of the Employment Agreement Extension is one year commencing on June 1, 2009 and fully incorporates all terms of the Employment Agreement, originally executed by the Parties and effective on June 1, 2008, and this Employment Agreement Extension.

SECTION 2. EMPLOYMENT

The Employment Agreement shall automatically renew on its anniversary date (June 1st) for a period of one (1) year hereinafter unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Employment Agreement shall remain in effect until the expiration of the term of the Employment Agreement unless Employee voluntarily resigns.

SECTION 3. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Sixteen Thousand One Hundred and Thirty Two Dollars (\$116,132.00), per year, beginning October 1, 2009 payable in equal instalments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed five percent (5%) of Employee's base salary of Section A above, contributions made by Employee to a 457 Plan or other qualified retirement program.

C. Consideration shall be given on an annual basis to increased compensation. Increased compensation can be in the form of a salary increase and/or bonus and/or increase in housing allowance.

D. Employer shall provide Employee a housing allowance of One Thousand One Hundred and Twenty Five Dollars (\$1,125.00) per month beginning October 1, 2009.

SECTION 4. NOTICE

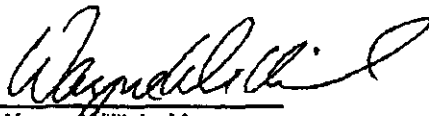
Employee: Sharon Hammer
P.O. Box 1499
Sun Valley, ID 83353

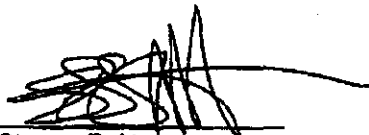
SECTION 5. GENERAL

All other provisions of the City Administrator Employment Agreement effective June 1, 2008 shall remain in full force and affect.

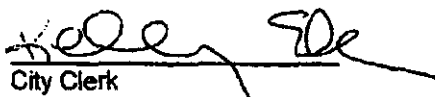
EMPLOYER
CITY OF SUN VALLEY, a
Municipal corporation

EMPLOYEE

By: 
Wayne Willich, Mayor

By: 
Sharon R. Hammer

ATTEST:


City Clerk

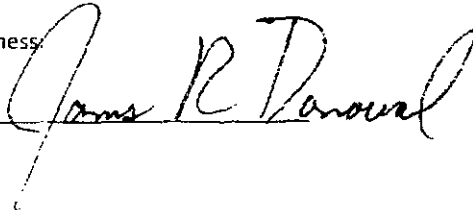
SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

Witness



Kirtlan G. Naylor [ISB No. 3569]

Jacob H. Naylor [ISB No. 8474]

Tyler D. Williams [ISB No. 8512]

NAYLOR & HALES, P.C.

Attorneys at Law

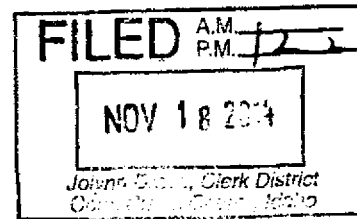
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Email: kirt@naylorhales.com; jake@naylorhales.com; tdw@naylorhales.com



Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
SUN VALLEY'S MOTION FOR
SUMMARY JUDGMENT**

ORIGINAL

Defendant, the City of Sun Valley, by and through its counsel, Naylor & Hales, P.C., hereby submits this Memorandum in Support of Sun Valley's Motion for Summary Judgment. As shown below, summary judgment is appropriate in this case and Plaintiff's complaint should therefore be dismissed, with final judgment entered in favor of Sun Valley, Nils Ribi and DeWayne Briscoe.

SUN VALLEY'S MSJ MEMORANDUM - 1.

I. INTRODUCTION

Plaintiff Sharon R. Hammer sued Sun Valley under the Idaho Public Employee Protection Act, Idaho Code § 6-2101 *et seq* (the "Whistleblower Act") on June 29, 2012. (See Complaint for Damages and Demand for Jury Trial). She claims that she was twice placed on paid administrative leave pending an investigation in December 2011 and January 2012, then terminated on January 19, 2012, in retaliation for having allegedly reported that then-Councilman Nils Ribi¹ harassed her.

Hammer, however, waived this claim when she executed her City Administrator Employment Agreement ("Employment Agreement") on June 1, 2008. She then later released this claim at the time she was terminated in January 2012 when she executed a "Supplemental Release Pursuant to City Administrator Employment Agreement" (the "Release") in exchange for a six-month severance payment. Indeed, the Honorable Edward J. Lodge, United States District Court for the District of Idaho, has already ruled that Hammer's waiver and release was valid and binding with respect to similar state and federal claims based on retaliatory discharge.

Additionally, Hammer's Whistleblower Act claim is meritless. First, a portion of it is time barred because she did not timely file suit within 180 days after the alleged violation. More so, with respect to the non-time barred portions, summary judgment is appropriate because, in short, there is insufficient evidence upon which Hammer can make out a *prima facie* case of retaliation in violation of the statute. And even if she could, Sun Valley had a legitimate, non-discriminatory reason to discharge her and she cannot show that such reason was a pretext. Trial is therefore unwarranted here.

¹Nils Ribi served two, four-year terms as a Sun Valley Councilman, ending in January 2014.

Last, Hammer's claims for damages exceed the scope of allowable damages under the Whistleblower Act. In the unlikely event that any portion of Hammer's claim makes it past summary judgment, and in the even more unlikely event she prevails at trial, Hammer cannot as a matter of law obtain the full relief she seeks. The Court should therefore grant partial summary judgment with respect to damages.

II. BACKGROUND

A. Hammer's Employment Agreement and Release

Hammer was hired as the City Administrator for Sun Valley on June 1, 2008, under the terms of a written Employment Agreement. (Complaint, ¶¶ 1, 16.) Section 3 of the Employment Agreement contains two termination provisions such that Hammer's employment could be terminated by Sun Valley either with or without cause. Specifically, Section 3.A (the "without cause" provision) provides in plain and unambiguous language:

Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

(Declaration of Susan Robertson, Ex. A (Employment Agreement, § 3.A)) (emphasis original). Section 3.B provides that in the event of a termination "with cause" Hammer would not be entitled to any severance payment. (*Id.*, § 3.B.)

The next year Hammer executed an Employment Agreement Extension that provided for automatic, annual one-year extensions of the Employment Agreement. (*Id.*, Ex. B (Employment Agreement Extension, § 2.)) It is thus undisputed that the Employment Agreement was in full force and effect at the time of Hammer's termination.

On January 19, 2012, Hammer was terminated from her position at Sun Valley under the "without cause" provision of her Employment Agreement. In compliance with Section 3.A, Hammer drafted, through her attorney/husband James R. Donoval, and executed the Release stating in full:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(*Id.*, Ex. C) Hammer received her six-month severance payment as stated therein and she and Sun Valley parted ways.

A mere six months after accepting that money and agreeing not to sue Sun Valley, however, Hammer turned around and sued Sun Valley and two officials² for alleged violations of the Whistleblower Act.³ Hammer alleges that during the time of her employment at Sun Valley from

²The Court dismissed defendants Mayor DeWayne Briscoe and Councilman Nils Ribi on November 26, 2013, because there is no individual liability under the Whistleblower Act.

³Hammer had previously sued and then voluntarily dismissed Sun Valley and various officials based upon similar allegations, in Blaine County Case No. CV-2011-928 (J. Elgee). She had also filed a claim against Sun Valley, Ribi and Briscoe with the Idaho Human Rights Commission, also based on similar allegations. It is undisputed that Hammer knew of the

June 1, 2008, until her discharge on January 19, 2012, she was harassed by Councilman Nils Ribi, which she asserts she reported to various Sun Valley officials and in retaliation she was placed on administrative leave, investigated, then terminated. (Complaint, ¶¶ 31-38.) Her Complaint conveniently ignores the waiver language in her Employment Agreement and the fact that she received a six-month severance in exchange for releasing this very claim.

B. Hammer's Termination

Mayor Briscoe was sworn into office as the new Sun Valley mayor on January 3, 2012. (Complaint at 29, ¶ 143.) As is common with new administrations, he made the determination that he could not work with the prior mayor's chosen city administrator. Instead, as was his prerogative as mayor, Mayor Briscoe decided he would rather vet and hire his own person for that important position, with whom he would necessarily have a close working relationship.⁴ (Declaration of Kirtlan G. Naylor, Ex. A (Briscoe Depo Tr. at 129:4 - 130:8); Ex. B (Griffith Depo Tr. at 13:14-24, 15:21-23, 17:1-5, 29:13-21, 33:16-24); Ex. C (Youngman Depo Tr. at 27:24 - 29:6, 82:11 - 83:1); Ex. D (Suhadolnik Depo Tr. at 14:16-24); Ex. E (Ribi Depo Tr. at 171:20 - 172:15)). Thus, on January 19, Hammer's position with Sun Valley was terminated under the "without cause" provision of her Employment Agreement, under which she executed a Release of all claims against Sun Valley and received a six month severance payment, as set forth above.

allegations that form the basis of the present lawsuit at the time she was terminated and signed the Release.

⁴Under Idaho Code § 50-206, appointed officers (such as Hammer) may be removed by the mayor for any reason "deemed sufficient" with the affirmative vote of half the full city council plus one. Alternatively, a city council may upon its own initiative remove an appointed official by unanimous vote.

SUN VALLEY'S MSJ MEMORANDUM - 5.

C. Related Federal Case

Hammer also brought a related federal action against Sun Valley, Briscoe and Ribi, wherein she alleged fourteen claims for gender discrimination and harassment, retaliation, due process violations (both procedural and liberty interest), conspiracy, assault, wrongful termination, breach of contract and negligent infliction of emotional distress. *See Hammer v. Sun Valley*, Case No. 1:13-cv-21-EJL. That case is still pending, but substantially overlaps with the present Whistleblower case, especially with respect to the Employment Agreement and Release. The Honorable Edward J. Lodge, United States District Judge, significantly narrowed the federal case by dismissing all but two claims based on the plain and unambiguous language of the very same Employment Agreement and Release at issue here. (Naylor Decl. Ex. I ("Lodge Decision"))

In Judge Lodge's words: "the language of the contract could not be clearer. The waiver/release was to 'any and all claims' without any limitations." (Lodge Decision at 17) (emphasis added). Thus, Judge Lodge dismissed nearly all of Hammer's claims existing against Sun Valley at the time of her termination. Notably, Judge Lodge's dismissal included claims for retaliation closely mirroring Hammer's Whistleblower claim here. Only Hammer's claims for assault (which does not involve Sun Valley) and liberty interest violation (which accrued after the release) remain in the federal lawsuit.⁵

D. Other Ongoing Sun Valley Matters

While Hammer's termination was because Mayor Briscoe determined he could not work with her and would rather vet and hire his own City Administrator, there were other ongoing Sun Valley

⁵Hammer moved for reconsideration but no decision has been entered yet on that motion. Additionally, defendants moved for summary judgement on the remaining two claims, which is also pending.

matters under investigation, which did in part relate to her being placed on paid administrative leave. These matters were not, however, the cause of Hammer's termination.

To put these events in context, the starting point is the fall of 2011. On October 5, 2011, then-Sun Valley Treasurer Michelle Frostenson met with then-Mayor Wayne Willich and expressed concerns she had about possible City mismanagement. (Naylor Decl., Ex. F (Frostenson Depo Tr. at 15:22 - 16:14, 25:11 - 37:19); Ex. B. (Willich Depo Tr. at 11:14 - 14:3)) Frostenson again raised the same issues to Councilman Ribí on or about November 10 because she did not believe Mayor Willich had adequately addressed her concerns. (Frostenson Depo Tr. at 15:22 - 16:6; 53:14-22; Ex. C (Ribí Depo Tr. at 26:14 - 32:9)) Ribí contacted Councilman Bob Youngman and Councilman/Mayor-Elect DeWayne Briscoe⁶ regarding these same matters and a City Council special executive session was called for November 11, 2011. (Complaint at 26, ¶ 129.)

During the November 11 executive session, Frostenson presented her allegations to the Mayor and City Council. (Complaint at 26, ¶ 130; Briscoe Decl., Ex. A.⁷) Afterwards, Mayor Willich and Adam King, the City Attorney, met with Hammer, presented the allegations that had been made against her and proposed that she resign in exchange for a severance payment. (Complaint at 26, ¶ 131.) Hammer turned down the offer. (Complaint at 27, ¶ 133.)

On November 13, Hammer's husband/attorney, James R. Donoval, delivered to the Sun Valley City Council and Mayor Willich a letter, dated November 12, threatening litigation regarding

⁶Briscoe defeated Willich in the Mayoral race on November 8, 2011. Additionally, Franz Suhadolnik and Michelle Griffith were elected as new City Council members, replacing Mayor Briscoe (due to his vacancy) and Joan Lamb.

⁷Mayor Briscoe's declaration is attached as Exhibit J to the declaration of Kirtlan Naylor.

Ribi's alleged harassment, and in the event of any disciplinary action against Hammer. (Complaint at 27, ¶ 136; Briscoe Decl., Ex. B.)

On November 14, the City Council conducted a follow-up executive session. (Complaint at 27, ¶ 137.) The City Council voted to engage an attorney to conduct an independent investigation into the allegations being made. (Briscoe Decl., Ex. A at SV 2070.)

Donoval sent Sun Valley a second letter, dated November 15, again threatening a lawsuit in connection with Hammer's allegations of harassment by Ribi and the City's intent to conduct an investigation. (Briscoe Decl., Ex. C.) Donoval followed up with a third letter, dated November 16, which actually applauded the decision to conduct an internal investigation, yet still threatened a lawsuit unless Sun Valley agreed to Hammer's absurd settlement terms, which included Ribi's resignation, a six-figure payment to Hammer, and a promise that Ribi would never contact Hammer again, otherwise he would be subjected to a hundred thousand dollar punitive damage assessment. (Briscoe Decl., Ex. D.)

On November 18, Mayor Willich placed Hammer on non-disciplinary paid administrative leave, pending the outcome of the investigation. (Briscoe Decl., Ex. E.) Hammer responded by filing a Whistleblower Claim (the first Whistleblower action) in Blaine County Case No. CV-2011-928, which was later voluntarily dismissed. She also filed a complaint with the Idaho Human Rights Commission. (Complaint at 28, ¶ 139.)

Sun Valley hired Patricia Ball⁸ on or about November 21 to conduct the investigation. The "Ball Investigation" occurred over the next several weeks and, with authorization from Mayor

⁸While Ms. Ball is an attorney, her investigation was not done in the capacity of a legal representative.

Willich, expanded into a broader inquiry of Sun Valley financial issues, Fire Department issues, and Hammer's allegations of harassment by Ribi. (Briscoe Decl., Ex. F.) (Filed Under Seal)

On December 16, Mayor Willich provided authorization for the Blaine County Prosecuting Attorney to be notified about "information and facts discovered in an employment investigation that may be the subject of criminal conduct." (Briscoe Decl. Ex. I.) He also issued to Hammer a "NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION", along with a Garrity Notice. (Briscoe Decl., Ex. G and H) (emphasis original).

The Ball Investigation then culminated in a December 20, 2011 report known as the "Ball Report"⁹ (*id.*). With respect to Hammer, the Ball Report concluded that "[s]ufficient evidence exists to support multiple violations of City policy by Hammer[]" and that "[t]hese matters should be immediately referred to an outside agency for further audit and investigation of possible civil and/or criminal violations." (*Id.* at BALL 3.) After receiving the Ball Report, but before Ball actually presented it to the Mayor and City Council, Mayor Willich decided that he disagreed with the report and recommendations Ball made and therefore unilaterally brought Hammer back from paid administrative leave on December 27. (Complaint at 28, ¶¶ 141-142.)

Briscoe took office as Sun Valley's new Mayor on January 3, 2012. (Complaint at 29, ¶ 143.) The next day he provided authorization for the Blaine County Prosecuting Attorney to be notified about "information and facts discovered in an employment investigation that may be the subject of criminal misconduct." (Briscoe Decl., Ex. J.) He also issued Hammer a "NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION", essentially tracking the language of

⁹The Ball Report actually consists of three separate reports covering allegations involving the Fire Department, Ribi and Hammer. (Briscoe Decl., ¶ 8.) For purposes here, the Ball Report will refer only to the report covering the investigation into Hammer.

former-Mayor Willich's notice. (Briscoe Decl., Ex. K.) Mayor Briscoe also issued Hammer a Garrity Notice. (Briscoe Decl., Ex. L.) Similar notices were issued to other Sun Valley employees in connection with the Ball Investigation findings about the Fire Department. (Briscoe Decl., ¶ 14.)

As noted above, Hammer was terminated on January 19, 2012, because Mayor Briscoe determined he could not work with her and would rather vet and hire his own city administrator. Afterwards, Sun Valley issued a press release in the Idaho Mountain Express informing the public that Hammer had been terminated as the City Administrator. (Briscoe Decl., Ex. O.)

In February 2012, shortly after Hammer was terminated, Sun Valley hired the law firm of Moffatt Thomas Barrett Rock & Fields, Chtd., who engaged an independent accounting firm, Hagen, Streiff, Newton & Oshiro, P.C., to conduct a thorough audit of Sun Valley's financial matters from 2009 through 2011. (Briscoe Decl., ¶ 18.) The resulting Forensic Audit was completed in August 2012. The audit found significant problems, including: (a) non-compliance with control and approval of expenditure processes; (b) lack of control over work schedules by salaried exempt employees; (c) exempt employees being paid twice for work performed during normal working hours; (d) exempt employees being paid salaries inconsistent with the personnel manual; (e) problems with the compensation of hourly on-call firefighters; (f) non-compliance with the accrued vacation hour policies; (g) improper use of city property; (h) improper use of city credit cards; (i) inappropriate use of a fuel card; and (j) problems with travel expenses reimbursement. (Briscoe Decl., Ex. P.)

Similarly, on November 21, 2012, the Blaine County Prosecuting Attorney issued a letter to Sun Valley about the criminal investigation initiated months before, which had been performed by Scott Birch, the Attorney General Office's Criminal Investigative Unit Chief. Based upon the criminal investigation, which included a review of Sun Valley documents as well as the Ball Report

and the Forensic Audit, the PA found misconduct by Hammer, but he chose not to pursue criminal charges in light of the heightened burden of proof of "beyond a reasonable doubt." Notably, the PA concluded:

Although no criminal charges will be forthcoming, the investigations revealed serious failures at multiple levels of management and supervision within the City of Sun Valley, including (1) a failure to document; (2) a failure to follow stated policies and procedures; (3) lax management and oversight; (4) poor time accounting; (5) apparent conflicts of interest; and (6) a lack of checks and balances through the claims process.

(Briscoe Decl., Ex. Q.)

Meanwhile, in June 2012 while both the Forensic Audit and criminal investigations were underway, two tort claim notices against Sun Valley and various Sun Valley officials, including Hammer, were settled. These claims were brought by Frostenson and Kelly Ek, a former Sun Valley Clerk. Both claimed that Sun Valley officials, including Hammer, retaliated against them after making allegations of misconduct and financial problems. (Briscoe Decl., ¶ 20.) Sun Valley published press releases about the fact of the settlements in June 2012, which included brief synopses of the allegations. (Briscoe Decl., Exs. R and S.) Both matters were later resolved.

Hammer then filed the present suit on June 29, 2012, and has attempted to confuse these events and conflate them in such a way as to show that Ribi somehow orchestrated a scheme to have her fired in retaliation for reporting his alleged harassment. As shown below, however, Hammer cannot proceed to trial because she waived and then released this claim and, in any event, there is insufficient evidence to support her claim.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Shapley v. Centurion Life Ins. Co.*, 154 Idaho 875 (2013). A defending party may move for summary judgment as to all or any part of the claims against it. I.R.C.P. 56(b).

The initial burden of establishing the absence of a genuine issue of material fact rests with the moving party. *Harris v. State*, 147 Idaho 401, 404-405 (2009). In determining whether this burden has been met, "a court will consider only that material contained in affidavits or depositions which is based upon personal knowledge and which would be admissible at trial." *Petricovich v. Salmon River Canal Co.*, 92 Idaho 865, 869 (1982). Any disputed material facts is liberally construed in favor of the non-moving party, and the court makes all reasonable inferences in favor of the party resisting the motion. *McCoy v. Lyons*, 120 Idaho 765, 769 (1991).

Upon this initial showing, the burden then shifts to the non-moving party and in order to defeat summary judgment must submit "evidence . . . which contradicts the evidence submitted by the moving party, and which establishes the existence of a material issue of disputed fact." *State Dept. of Agric. v. Curry Bean Co.*, 139 Idaho 789, 792 (2004). Even disputed facts will not defeat summary judgment when the non-moving party fails to establish the existence of an essential element of the case, *Badell v. Beeks*, 115 Idaho 101, 102 (1988), or when a plaintiff fails to establish a prima facie case on which he or she bears the burden of proof. *State v. Shama Res. Ltd. P'ship*, 127 Idaho 267, 270 (1955). Further, the non-moving party "must not rest on mere speculation because

a mere scintilla of evidence is not enough to create a genuine issue of fact." *Harris v. State Dept. of Health and Welfare*, 123 Idaho 295, 298 (1992).

IV. ARGUMENT

A. Hammer Plainly and Unambiguously Waived and Later Released Her Whistleblower Claim Against Sun Valley

Hammer's Employment Agreement is a plain and unambiguous complete recital of the terms and conditions of her employment with Sun Valley. It specifically states that "[t]he text herein shall constitute the entire agreement between the parties." (Employment Agreement § 12.) Relevant here, the Employment Agreement provides that Hammer could be terminated, "without cause, for any reason or no reason." (*Id.*, § 3.) (emphasis added) It further provides that, at the time Hammer executed the agreement, she waived all claims of any kind arising from a termination without cause. (*Id.*) In a separate clause Hammer also agreed that upon receipt of the agreed upon severance payment she would release all claims against Sun Valley. (*Id.*)

Thus, Hammer's present Whistleblower Claim fails for two distinct reasons: first, she waived any claim arising from a termination without cause when she entered into her Employment Agreement with Sun Valley; second, she later released all claims against Sun Valley when she received her six-month severance payment. Summary judgment is therefore appropriate, consistent with the Lodge Decision on the same issues.

1. **Hammer's Waiver and Release are Enforceable**

It is well settled that "[f]reedom of contract is a fundamental concept underlying the law of contracts." *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499 (1970). It is, therefore, "a general rule of this state and the majority of American jurisdictions that a party may contract to

absolve [herself] from certain duties and liabilities under a contract subject to certain limitations." *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178 (1979).

A legally enforceable contract must manifest mutual assent of the parties to its terms, which must be stated plainly and explicitly, and there must be consideration. *State v. Korn*, 148 Idaho 413, 415 (2009) (citing 17A Am.Jur.2d Contracts § 19 (2d ed. 2009)). When the terms of a contract are clear and unambiguous their interpretation and legal effect are questions of law. *Opportunity, LLC v. Ossewarde*, 136 Idaho 602, 605 (2002) (citing *Idaho v. Hosey*, 134 Idaho 883, 886 (2000)). "The meaning of an unambiguous contract must be determined from the plain meaning of the words." *Id.* The intent of the parties is thus ascertained from the contract language. *Id.* at 607.

Thus, "[w]here preliminary negotiations are consummated by written agreement, the writing supercedes all previous understandings and the intent of the parties must be ascertained from the writing." *Valley Bank v. Christensen*, 119 Idaho 496, 498 (1991) (emphasis added). "If the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract." *Id.*

All contracts must also be supported by valid consideration. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526 (2012). Consideration exists where there is something given in exchange for a promise. While consideration is invalid if it is something to which the other party already has an absolute right, "forbearance to prosecute a disputed claim is good consideration." *Salmeron v. U.S.*, 724 F.2d 1357, 1363 (9th Cir. 1983) (citing 1 Corbin on Contracts § 140 at 595 (1963)). Further, where a contract is in writing the presumption is that it is supported by valid consideration. *Weisel*, 152 Idaho at 526.

SUN VALLEY'S MSJ MEMORANDUM - 14.

2. Hammer Waived Any Claim Arising from a Termination Without Cause Under the Plain and Unambiguous Terms of the Employment Agreement

When Hammer was hired by Sun Valley in June 2008 she executed the Employment Agreement in which she contractually waived any claim that could arise from a future termination without cause. (Employment Agreement § 3.A.) Specifically, the clear and unambiguous language of her Employment Agreement states:

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release against the City of Sun Valley.

(*Id.*) (bold in original, underline added) Accordingly, Hammer cannot maintain her present Whistleblower Action against Sun Valley because she indisputably waived this claim when she executed the Employment Agreement.

3. Hammer Later Released Sun Valley of All Existing Claims Under the Plain and Unambiguous Terms of the Release

The "without cause" provision in Section 3.A of Hammer's Employment Agreement also includes a requirement stating that "receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley." (Employment Agreement, § 3.A.) This release clause is separated from the previously discussed waiver provision, as it allowed Hammer the choice (upon a termination "without cause") to: (1) accept the contractually provided severance payment and consequently release all claims against Sun Valley, regardless of whether they arose from a

termination without cause; or (2) to reject the severance payment and retain the right to pursue all non-waived claims against Defendant City of Sun Valley. (*Id.*)

The plain language of Plaintiff Hammer's Employment Agreement clearly states that receipt of the severance payment is subject to a release of all claims against Defendant. (*Id.*) This release is a conditional term and was only required if Plaintiff Hammer voluntarily took receipt of the severance payment. This is a clear and distinct event from the initial waiver for all claims arising from a termination "without cause". In other words, when Hammer made her choice to accept the severance payment and executed the Release, she released all claims against Sun Valley.

If Hammer wanted to sue Sun Valley, her option at that time was to forego the severance payment and pursue any non-waived legal action she believed she might have. This was a basic risk/reward analysis. In signing the Release and accepting the severance payment, Hammer was guaranteed her six-month severance payment. In exchange for that certainty, she agreed to release any claim for damages available at that time. Alternatively, she could have rejected the severance payment and taken the risk of pursuing a lawsuit against Sun Valley for any un-waived claims.

It is undisputed that on January 23, 2013, Hammer chose the first option and accepted the severance payment in exchange for a release of "all claims against the City of Sun Valley." She is now attempting to seek double-recovery as she has retained her six-month severance payment and also seeks money damages under the Whistleblower Act (as well as her federal court claims). This is contrary to the plain and unambiguous language of her Employment Agreement and Release. Because Hammer has released all claims against Sun Valley – as Judge Lodge has already found – Hammer cannot maintain the present action. Summary judgment is therefore appropriate. The analysis and decision by Judge Lodge is correct, persuasive and can be relied upon by this Court.

B. Hammer's Whistleblower Claim Is Meritless

1. Idaho's Whistleblower Act

For the sake of argument, even if the Court were to analyze Hammer's claim on its merits, it cannot survive summary judgment. The Whistleblower Act is designed to benefit the citizens and protect the integrity of government "by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of law, rule or regulation." I.C. § 6-2101. Specifically, the Whistleblower Act prohibits the governmental employer from taking:

. . . adverse action against an employee because the employee . . . communicates in good faith¹⁰ the existence of any waste of public funds, property or manpower, or a violation or suspected violation of law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

I.C. § 6-2104(1)(a).

The Whistleblower Act contains an implicit, common-sense requirement that the employer engage in some sort of "predicate act" that triggers the application of the statute in the first place. *Black v. Idaho State Police*, 155 Idaho 570, 574 (2013). Thus, the statute cannot be used as a tool to resolve or take action as a result of political, internal, or organizational issues. It only protects activities directed at reporting or "blowing the whistle" on the predicate act of wrongdoing related to waste or the violation of a law, rule or regulation. *See id.*; I.C. § 6-2101.

¹⁰"For purposes of subsection 1(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous." I.C. § 6-2104(1)(b).

If a plaintiff can establish the existence of a predicate act triggering the application of the Whistleblower Act, the issue becomes whether the plaintiff can set forth sufficient facts to demonstrate a prima facie case for retaliatory discharge. This requires an adequate showing that: (1) the plaintiff was an employee that engaged in or intended to engage in a protected activity; (2) the defendant is an employer that took adverse action against the employee; and (3) there is a causal connection between the protected activity and the employer's adverse action. *Curlee v. Kootenai Cnty Fire & Rescue*, 138 Idaho 391, 464 (2008).

Under *McDonnell Douglas*, once the plaintiff establishes a prima facie case, the burden shifts to the defendant to show that its adverse employment action was for a legitimate, non-retaliatory reason. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801-804 (1973). If the employer meets this burden, the burden shifts back to the plaintiff to prove that the legitimate, non-discriminatory reason the employer proffered is a pretext. *Id.*; see *Hatheway v. Bd. of Regents of Univ. of Idaho*, 155 Idaho 255, 263-264 (2013) and *Frogley v. Meridian Jt. Sch. Dist. No. 2*, 155 Idaho 558, 564 (2013) (both implicitly overruling *Curlee's* summary judgment framework and applying *McDonnell Douglas* burden shifting framework to employment retaliation claims). "A plaintiff may establish pretext either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Frogley*, 155 Idaho at 564.

2. A Portion of Hammer's Claim is Time-Barred

All actions under the Whistleblower Act must be brought "within one hundred eighty (180) days after the occurrence of the alleged violation" I.C. 6-2105(2). Hammer's Complaint was filed June 29, 2012. She therefore cannot proceed on any alleged violation that occurred prior to

SUN VALLEY'S MSJ MEMORANDUM - 18.

January 1, 2012, which is 180 days before the date of her Complaint. *See id.* This necessarily excludes her theories that she was retaliated against by being placed on paid leave and investigated in November and December 2011.

3. Sun Valley Did Not Engage in a Predicate Act Merely Because an Elected Official Allegedly Violated City Policy

Hammer alleges that Councilman Ribí harassed her in violation of Sun Valley's Personnel Policies & Procedures Manual. (Complaint, ¶ 18, Ex. 1 ("Employee Manual")) The Employee Manual includes a "Standard of Conduct" section that, among other things, prohibits work place harassment "in any form, including verbal, physical and visual harassment." (*Id.*, § 27; Employee Manual, § 7.5.) The Complaint rambles on at some length about the alleged violations of the Employee Manual Ribí supposedly engaged in, but they essentially boil down to mere allegations that Hammer and Ribí had several disagreements about a number of work-related issues and at times Ribí would become angry, bang his fists on a table and "verbally chastise her for not doing exactly what he wanted her to do." (*See id.*, ¶¶ 43-126.)

Hammer's deposition testimony echoes the same type of alleged misconduct:

Q. And what was the nature of the harassment?

A. Those allegations are in the complaint.

...

Q. What was the nature of the harassment that you claim Nils Ribí did?

A. The bigger incidents are in the complaint. The nature of his harassment was to try to intimidate me into doing what he wanted me to do. He had a pattern of coming by City Hall during the lunch hour when he knew that the mayor and most of the other City employees were not in City Hall. He would stand in my doorway and try to intimidate me into doing things that he – I had not been directed to do by the mayor. When I would suggest that he talk to the mayor, because it was very – made clear to

me that my direction came from the mayor, he got very agitated. He would raise his hands and lean through the doorway and shake his hands and say, "No. No. You don't understand." He yelled at me that the mayor did not know what his job was.

(Naylor Decl., Ex. H, Hammer Depo Tr. at 187:7 - 188:6.)

In other words, Hammer's allegations comes down to her belief that Ribi would at times become angry over work-related disputes. Even assuming this conduct violated the Employee Manual, it certainly does not trigger application of the Whistleblower Act. Indeed, the Idaho Supreme Court has rejected taking an expansive view of what constitutes a violation of a law, rule or statute necessary to implicate the Whistleblower Act. *Mallonee v. State*, 139 Idaho 615, 620 (2004). Under the plain language of the statute, the *Mallonee* court ruled that there must be a violation of laws, rules or regulations that had been properly promulgated by an administrative body giving them the force and effect of law. *Id.* Where no such promulgation has occurred, a violation of a city policy simply does not amount to a predicate act. *Id.* at 620-621. Thus, merely violating an internal city policy does not trigger application of the Whistleblower Act. *See id.*

Consequently, while reporting an alleged assault or status-based harassment may be a predicate act for purposes of the Whistleblower Act, Hammer cannot proceed to trial under any theory that Ribi merely violated the Employee Manual.

4. Hammer Cannot Demonstrate a Prima Facie Case

Even to the extent Hammer could show a Sun Valley official engaged in a sufficient predicate act to implicate the Whistleblower Act, she still cannot adequately demonstrate a prima facie case to warrant trial.

**a. Placing an Employee on Paid Administrative Leave
Pending an Investigation Is Not Adverse Action**

The Whistleblower Act plainly states what constitutes an adverse action: "to discharge, threaten or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions or privileges." I.C. § 2103(1).

Sun Valley does not dispute that termination is an adverse action. However, placing an employee on paid administrative leave pending an investigation is not. As the Rhode Island Supreme Court very recently explained in finding that similar action as here did not violate that state's nearly identical whistleblower statute,¹¹ "[t]he use of paid administrative leave provides a reasonable means of immediately neutralizing a potentially contentious situation while minimally affecting the [employee]." *Russo v. State, Dept. of Mental Health, Retardation and Hospitals*, 87 A.3d 399, 407 (R.I. 2014) (internal quotations omitted).

The *Russo* court further discussed how its decision was bolstered by the fact that under federal case law, to be actionable, an adverse employment action must be "materially adverse in order to 'prevent lawsuits based upon trivial workplace dissatisfactions' or 'bruised 'ego[s]'" *Id.* (quoting *White v. Burlington Northern & Santa Fe Railway Co.*, 364 F.3d 789, 795, 797 (6th Cir. 2004) (en banc) *aff'd by Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006) (requiring that an adverse employment action must be material). Thus, consistent with the wording of the Idaho Whistleblower Act, actionable adverse actions include (other than the obvious

¹¹Rhode Island's Whistleblower Act states "[a]n employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment . . . [because the employee engaged in protected activity.]" R.I. Gen Laws § 28-50-3.

discharge) such things as change in salary, benefits, responsibilities, refusals to hire or promote, reprimands, reassignment with significantly different responsibilities and otherwise inflicting direct economic harm. *Id.* Indeed, "several federal appellate courts have specifically held that administrative leave with pay is not an adverse employment action." *Id.* (citing *Singletary v. Missouri Dept. of Corr.*, 423 F.3d 886, 891-892 (8th Cir. 2005); *Kenney v. Merit Syst. Protection Bd.*, 356 Fed. Appx. 394, 396 (Fed. Cir. 2009); *Joseph v. Leavitt*, 465 F.3d 87, 91 (2d Cir. 2006); *Peltier v. United States*, 388 F.3d 984, 988 (6th Cir. 2004); *Von Gunten v. Maryland*, 243 F.3d 858, 869 (4th Cir. 2001); *Breaux v. City of Garland*, 205 F.3d 150 (5th Cir. 2000)).

Idaho's case law is consistent with these other jurisdictions. In fact, the Idaho Supreme Court in *Hatheway*, mandated that to be actionable an adverse employment action must include significant changes in employment. *Hatheway*, 155 Idaho at 265 (citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998); *Kcosis v. Multi-Care Mgmt., Inc.*, 97 F.3d 876, 887 (6th Cir. 1996). Being placed on paid administrative leave pending an investigation does not constitute an adverse action, as in such instances there is no material or significant changes to the "compensation, terms, conditions, location, rights, immunities, promotions or privileges" of one's employment. *See* I.C. § 6-2103(1).

In this case, Hammer was placed on paid administrative leave twice pending the Ball Investigation into the allegations that had been made against her during the November 11, 2011 executive session, as well as a possible criminal investigation pursuant to the authority given by former-Mayor Willich on December 16 and reiterated by Mayor Briscoe on January 3, 2012. As numerous jurisdictions have made clear, such paid administrative leave does not constitute an adverse action. Rather, it was Sun Valleys' means to neutralize contentious situation with minimal

SUN VALLEY'S MSJ MEMORANDUM - 22.

effect on Hammer's employment. As such, while Sun Valley does not dispute that termination is an adverse act, Hammer cannot base her Whistleblower Act claim on merely being investigated while on paid leave.

b. Not All of Hammer's Reporting Qualifies as a Protected Activity

As discussed above, merely violating a city policy does not constitute a predicate act and thus does not trigger application of the Whistleblower Act. *See* Section 3.b, *supra*. It follows that reporting conduct that does not constitute a predicate act is likewise insufficient to create liability. *See* I.C. § 6-2104(1)(a) (requiring reporting in good faith the existence of waste, or violation or suspected violation of law, rule or regulation). Hammer therefore cannot support this element of her cause of action merely by showing that she reported Ribi's conduct that was allegedly in violation of the Personnel Manual.

c. Hammer Cannot Demonstrate That Her Termination Was Causally Connected to Complaining About Ribi's Conduct

Hammer claims that she was terminated because from 2008 through 2011 she reported harassment by Ribi to Mayor Willich, Adam King and Cam Daggett. Even viewing the evidence in a light most favorable to Hammer, however, her contentions are belied by the actual evidence in the record. To reiterate, Mayor Briscoe was sworn into office as the new Sun Valley mayor on January 3, 2012. As is common with new administrations, he made the determination that he could not work with the prior mayor's chosen city administrator. Instead, as was his prerogative as mayor, he decided he would rather vet and hire his own person for that important position, with whom he would necessarily have a close working relationship. Thus, on January 19, Hammer's position with Sun

a. There is Insufficient Direct Evidence of Pretext

Direct evidence may exist in retaliatory discharge cases where the "evidence, if believed, proves the fact without inference or presumption." *Id.* at 565 (internal quotations omitted). In other words, the evidence must require the conclusion that the defendant unlawfully retaliated against the plaintiff. *Id.* This typically requires some overt statement. *See id.* For example, in one age discrimination suit an employer issued a memorandum to management saying to "Fire Early – he is too old." *Id.* (discussing *Merritt v. Dillard Paper Co.*, 120 F.3d 1181 (11th Cir. 1997)). This direct statement thus requires no inferences as it directly showed that the employer's proffered reason for firing that employee was a pretext. This type of evidence is rare in retaliatory discharge cases. *Id.* at 567.

There is simply no similar direct evidence in this case that would show Sun Valley's reason for discharging Hammer was a pretext. Absent such evidence, Hammer cannot create a triable issue rebutting Sun Valley's proffered reason for her discharge.

b. There is Insufficient Indirect Evidence of Pretext

Where there is no direct evidence of pretext, a plaintiff "may come forward with circumstantial evidence that tends to show that the employer's proffered motives were not their actual motives because they are inconsistent or otherwise not believable." *Frogley*, 155 Idaho at 567 (internal quotations omitted). However, "such evidence must be substantial and specific." *Id.* (emphasis added). "[I]ndirect evidence is not substantial and specific where no evidence beyond what is produced to satisfy the plaintiff's prima facie case is produced. *Id.* And "[c]ourts only require an employer [to] honestly believed its reason for its actions, even if its reason is foolish or trivial or even baseless." *Id.* (internal quotations omitted). Summary judgment is therefore appropriate where

the plaintiff fails to show that the defendant did not honestly believe its proffered reasons for its actions. *Id.*

There is simply no such evidence in this case. Rather, the evidence merely shows that the only thing that happened at all related to Hammer reporting alleged harassment by Ribi is that Sun Valley broadened the Ball Investigation to include looking into those allegations. Hammer's theory that Ribi had some grand plan to get her fired, for which he recruited various other city officials and employees to execute, is pure speculation. Hammer cannot meet her burden to show pretext by relying on her baseless accusations.

C. Hammer's Remedies are Limited By the Whistleblower Act

If the Court allows Hammer to proceed to trial on any portion of her Whistleblower claim, it should nevertheless grant partial summary judgment to Sun Valley with respect to the scope of Hammer's potential recoverable damages. Specifically, Hammer claims that she has suffered "severe economic damages" and is entitled to her "loss of past and future wages, retirement benefits, medical benefits, other fringe benefits, and other losses to be proven at trial[,] and also seeks recovery for her "emotional damages, including but not limited to public ridicule, contempt, and hatred; embarrassment, emotional pain and suffering; and loss of enjoyment of life." (Complaint at 32, ¶ 169.) Thus, Hammer indicates that she is entitled to recovery any type and category of damages she can prove as a result of her termination if a jury finds her termination was in violation of the Whistleblower Act. Such broad recovery, however, is not authorized under the statute.

Instead, the Whistleblower Act explicitly limits the scope of recoverable damages to a finite enumerated list of special damages, and does not allow for general damages at all. Initially, the statute defines "damages" to include "injury or loss caused by each violation of this chapter, and

includes court costs and reasonable attorneys' fees." I.C. § 6-2105(1). It then states that "[a]n employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both. . . ." I.C. § 6-2105(2). The statute goes on to list the specific remedies that are available, stating:

A court, in rendering a judgment brought under this chapter, may order any or all of the following:

- (1) An injunction to restrain continued violation of the provisions of this act;
- (2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position;
- (3) The reinstatement of full fringe benefits and seniority rights;
- (4) The compensation for lost wages, benefits and other remuneration;
- (5) The payment by the employer of reasonable costs and attorneys' fees;
- (6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general fund.

I.C. § 6-2106 (emphasis added).

Thus, the statute only allows the court to order "any or all" of these express and specific remedies; it does not provide for any other type of relief. Although the initial providing for damages or equitable relief seems general, *see* I.C. § 6-2105, it must be read in conjunction with the more specific provisions of I.C. § 6-2106, which plainly and explicitly sets forth the remedies that a court may order for an employee. *See Wheeler v. Idaho Dept. of Health and Welfare*, 147 Idaho 257, 263-264 (2009) (stating that the court "must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the legislature."). Reading the provisions together, Section 2105 authorizes damages and/or specific relief, and Section 2106 lists the types

relief the court may order. To read the Whistleblower Act so broadly as to provide the broad and unenumerated relief sought by Hammer would require the Court to effectively nullify Section 2106.

In this case, Hammer does not seek the equitable relief authorized under subsections (1) through (3) (nor would it be appropriate here) and therefore in the unlikely event Hammer were to prevail she would only be allowed to recover her reasonable costs and attorney fees and "compensation for lost wages, benefits and other remuneration." I.C. § 6-2106(4), (5).

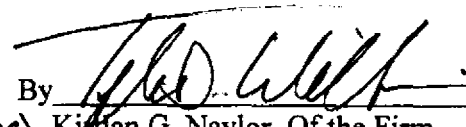
At least one Idaho district court has found that the Whistleblower Act limits the scope of recoverable damages such that damages do not include pain and suffering or front pay. *See Van v. Portneuf Med. Ctr., Inc.*, 156 Idaho 696, 1065 (2014) (*Van II*). That issue was appealed but the Idaho Supreme Court declined to consider it because the court found no liability. *Id.* Nevertheless, the district court's decision in *Van II* was correct. Nothing in Section 2106 can be read as a "make-whole" remedy. It contains no reference to pain and suffering or any other general damages Hammer believes she is entitled to. It also does not refer to front pay extending to Hammer's retirement as her claims suggests. Instead, it contains a list of six enumerated remedies, to the exclusion of all others. Thus, Hammer is not entitled to the broad relief she seeks. Consequently, in the event any portion of her Whistleblower Act claim proceeds, the Court should take this opportunity to grant partial summary judgment in favor of Sun Valley with respect to Hammer's damages.

V. CONCLUSION

As shown above and in the accompanying materials, summary judgment is appropriate in this case.

DATED this 18th day of November, 2014.

NAYLOR & HALES, P.C.

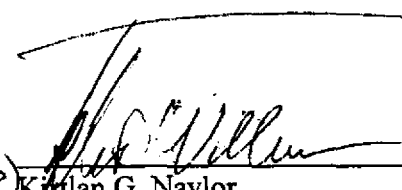
By 
(for) Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of November, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
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(for) Kirtlan G. Naylor

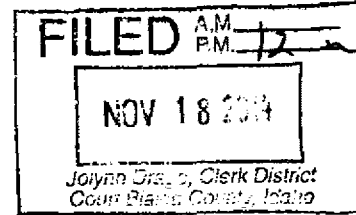
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**SUN VALLEY'S MOTION FOR
SUMMARY JUDGMENT**

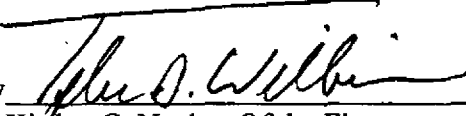
ORIGINAL

Defendant Sun Valley, by and through its attorneys of record, Naylor & Hales, P.C., hereby files its Motion for Summary Judgment pursuant to I.R.C.P. Rule 56. For the reasons set forth in the accompanying Memorandum in Support, the motion must be granted and the Plaintiff's claims dismissed with prejudice.

SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT - 1.

DATED this 18th day of November, 2014.

NAYLOR & HALES, P.C.


By 
(For) Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

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(For) Kirtlan G. Naylor

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SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT - 2.

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Attorneys at Law

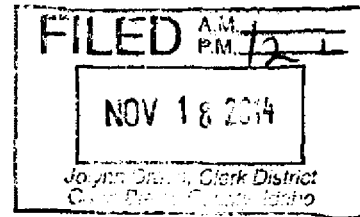
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
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SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DECLARATION OF KIRTLAN G.
NAYLOR**

ORIGINAL

I, KIRTLAN G. NAYLOR, declare under penalty of perjury that the following is true and correct:

1. I have personal knowledge of the matters set forth herein, and if called upon to testify of them, I could do so competently.

2. I am counsel of record for The City of Sun Valley, Nils Ribi, and Dewayne Briscoe, all named defendants in the current action.

3. Several depositions have been taken in this case, jointly with a related federal case

DECLARATION OF KIRTLAN G. NAYLOR- 1

Hammer et al. v. Sun Valley et al., Case No. 1:13-cv-211-EJL. Attached as exhibits are true and correct copies of excerpts from the following deposition transcripts:

- a. **Exhibit A.** Deposition transcript of DeWayne Briscoe (May 29, 2014).
- b. **Exhibit B.** Deposition transcript of Michelle Griffith (May 20, 2014).
- c. **Exhibit C.** Deposition transcript of Robert Youngman (May 20, 2014).
- d. **Exhibit D.** Deposition transcript of Franz Suhadolnik (May 21, 2014).
- e. **Exhibit E.** Deposition transcript of Nils Ribi (May 30, 2014).
- f. **Exhibit F.** Deposition transcript of Michelle Frostenson (April 23, 2014).
- g. **Exhibit G.** Deposition transcript of Wayne Willich (May 28, 2014).
- h. **Exhibit H.** Deposition transcript of Sharon R. Hammer (March 18, 2014)
(Vol. I).

4. Additionally, attached as **Exhibit I** is a true and correct copy of a Memorandum Decision and Order issued by the Honorable Edward J. Lodge, United States District Judge, in the above identified related federal lawsuit. This decision is being provided herewith for convenience, and is also available on Westlaw as 2014 WL 2738645 (D. Idaho June 17, 2014).

5. Last, attached hereto as **Exhibit J** is a true and correct copy of the Declaration of DeWayne Briscoe, including its Exhibits A - S, which was filed in the related Federal lawsuit. Exhibit F to Briscoe's Declaration is being filed **UNDER SEAL**.

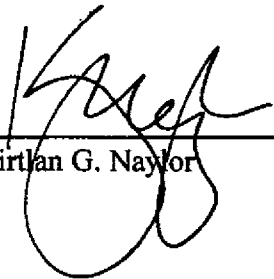
PURSUANT to Idaho Code § 9-1406 and Rule 7(d) of the Idaho Rules of Civil Procedure, I declare under penalty of perjury that the foregoing is true and correct.

///

///

DECLARATION OF KIRTLAN G. NAYLOR- 2

EXECUTED on this 18th day of November, 2014



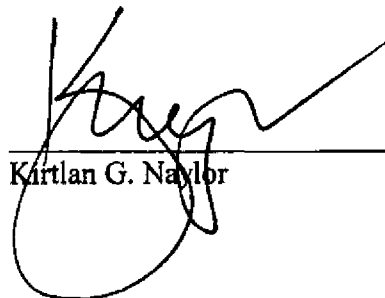
Kirtlan G. Naylor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of November, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Eric B. Swartz
Joy M. Vega
Jones & Swartz, PLLC
PO Box 7808
Boise, ID 83707-7808
Attorneys for Plaintiff

____ U.S. Mail
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____ Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Kirtlan G. Naylor

8406_34 Declaration of KGN Re MSJ.wpd

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,) Case No. 1:13-cv-211-EJL
vs.)
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
_____)

DEPOSITION OF DEWAYNE BRISCOE

MAY 29, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public

Page 126

Page 128

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: That was in question. My first
3 year on the council there became a question of
4 confidentiality by a council person, Joan Lamb, and
5 breaking confidentiality of executive sessions. And
6 there was a council discussion on exclusivity of
7 executive sessions.
8 And then recently we've had an attorney
9 general's report which varies from that, assistant
10 attorney general's report on confidentiality of
11 executive sessions going beyond what I have understood
12 before. So I understood they were to be confidential;
13 however, in my term on the council we had another
14 council person break that confidentiality, and nothing
15 was done to her, she wasn't reprimanded, nothing
16 happened done in that case with Joan Lamb.
17 So in generalities I'm answering your
18 question. My understanding personally is that I keep
19 things confidential on executive sessions. Like I said,
20 it's up to each council person to decide.
21 Q. (BY MR. SWARTZ) After the female council
22 member broke confidentiality, did the city council
23 implement a policy on confidentiality regarding
24 executive session?
25 MR. NAYLOR: Object to the form.

1 through 817. I'm going to ask you to take a look at
2 paragraph 10.
3 A. This isn't anything pertaining to me or my
4 document. This is someone else's document.
5 Q. Yes, Nils Ribí and his private attorney Keith
6 Roark put this together.
7 A. What was the date of this?
8 Q. It looks like it is November 23rd.
9 A. You want me to take a look at paragraph 10?
10 Q. Paragraph 10, please.
11 A. (Reviewing document.) The plaintiff is who?
12 Q. The plaintiff is Sharon Hammer.
13 A. I tried to understand. It's a long paragraph.
14 I tried to understand it.
15 Q. Yes, it is. In reading it it states that: As
16 of November 18, the city council and mayor had reason to
17 believe that Ms. Hammer may have committed serious
18 misconduct, including possible criminal violations
19 dealing with misuse of public funds and falsification of
20 public records. Do you see that there?
21 A. Yes.
22 Q. Do you recall any discussions about those
23 items in the November 11, 14, or 17 executive sessions?
24 MR. NAYLOR: Object to the form; asked and
25 answered.

Page 127

Page 129

1 THE WITNESS: I can't answer that. I haven't
2 looked at that part of our City policy manual or that
3 for some time. I don't know at this time.
4 Q. (BY MR. SWARTZ) Are you doing okay?
5 A. Oh, yeah.
6 Q. Earlier I asked you if you recalled any city
7 council member discussing criminal allegations against
8 Sharon Hammer in the November 11, 2011 executive
9 session, and you stated that you did not recall that.
10 A. Yes, I still reaffirm that I do not recall.
11 Q. What about the November 14 meeting, do you
12 recall whether there was any discussion of criminal
13 allegations at the November 14 meeting?
14 A. Criminal allegations against who?
15 Q. Sharon Hammer.
16 A. I don't recall at that meeting.
17 What do you want me to reference in this?
18 Q. We'll get there in a second.
19 What about the November 17, 2011 executive
20 session, do you recall any criminal allegations being
21 discussed in executive session there?
22 A. No, I don't recall.
23 Q. I understand.
24 I'm showing you an affidavit that was
25 submitted by Nils Ribí. It's marked as Hammer 813

1 THE WITNESS: I don't recall.
2 Q. (BY MR. SWARTZ) One way or the other?
3 A. Yes.
4 Q. Okay. Mayor, why was Ms. Hammer's employment
5 terminated?
6 A. Ms. Hammer's employment was terminated at my
7 recommendation to the council because I felt that it
8 would be difficult to work with Ms. Hammer in the
9 future. And I wanted a choice of naming my own
10 administrator, similar to what Mayor Willich had done
11 four years previously.
12 Q. Why did you feel like it was going to be
13 difficult to work with Ms. Hammer?
14 A. One of the reasons was the letter that we
15 discussed previously, in which she had said she had
16 authority over the mayor, over the city attorney, over
17 the city council. I don't know whether she put the
18 implementation in that letter or not. But I felt that
19 it would be difficult to work, if I had the total
20 responsibility and someone else had the authority under
21 that interpretation. I felt that I could work better
22 with someone else.
23 Q. What other reasons?
24 A. That's pretty much it. My style of
25 management, my style of management considerations

Page 130

1 differed from what had transpired in the past. I wanted
2 a management in a more strict control of the City. And
3 I just felt that I could work better perhaps with
4 another city administrator.

5 Q. I'm sorry. I didn't catch that.

6 A. I could work better with another city
7 administrator, of going through the process again of
8 city administration.

9 Q. Showing you that letter that you were
10 referring to, just to make sure we are on the same page,
11 it's SH-TIMELINE 465 through 466. Is that the letter
12 that you are referring to where she states that she has
13 got authority to interpret the policies?

14 A. Yes. "I have the authority to make final
15 determination of the application of all Sun Valley
16 personnel policies and procedures, and neither the Sun
17 Valley City Attorney, the Sun Valley Mayor or the Sun
18 Valley City Council has the authority to question or
19 overrule such findings."

20 But I terminated Sharon Hammer without cause.

21 Q. Do you see --

22 A. I requested termination of Sharon Hammer
23 without cause.

24 Q. Why is that?

25 A. Because that was my determination.

Page 131

1 Q. Who did you request that of?

2 A. The council. It was the mayor's request to
3 terminate Sharon Hammer according to her contract that
4 she helped write under the clause of -- what did we just
5 say?

6 MR. NAYLOR: Without cause.

7 THE WITNESS: Without cause. And the council
8 then reaffirmed that, and I informed the council that I
9 felt that I would be able to work better with a new city
10 administrator and I asked that she be terminated without
11 cause.

12 Q. (BY MR. SWARTZ) Did you discuss her contract
13 with the city council?

14 A. I'm not sure. I believe the city -- I don't
15 know whether the city council had a copy of her contract
16 or not. I don't know at the time.

17 Q. Did you look at her contract before you
18 reached your determination?

19 A. Yes.

20 Q. That you wanted to terminate her for cause --
21 or without cause?

22 A. Yes, I knew that clause was in there, yes.
23 Termination with cause, without cause. It was my
24 determination to ask for the termination of the council
25 without cause.

Page 132

1 Q. Let's go back to the letter that you were
2 citing as the reason that you believed it would be
3 difficult to work with Ms. Hammer.

4 A. Let me correct you. I'm sorry. It's your
5 deposition. But you said "the reason." I am just
6 listing out some things during the course of this
7 deposition of why I felt that I would rather work with a
8 new city administrator.

9 Q. What are those things?

10 A. I have already listed them during the course
11 of the conversation. And it's not pertinent because
12 she's being terminated without cause.

13 Q. Well, I would like you to help me identify
14 what in your testimony today you believed supported your
15 belief that you could not work with Ms. Hammer.

16 MR. NAYLOR: Object to the form. He just
17 barely answered that.

18 Q. (BY MR. SWARTZ) For example, was it because
19 she was in the Willich camp, was that a reason why you
20 didn't believe you could work with Ms. Hammer?

21 MR. NAYLOR: Object to the form.

22 THE WITNESS: As I stated, and I'll state it
23 again. It was my decision that I would rather work with
24 a new city administrator, and it was my decision to ask
25 the council to terminate her without cause.

Page 133

1 Q. (BY MR. SWARTZ) Yes. And I'm asking you
2 about the testimony you just gave where you said, for
3 all these reasons that you talked about today you
4 reached that conclusion. I want you to help me identify
5 all the reasons that led you to believe that you would
6 work better with a new city administrator?

7 MR. NAYLOR: Object to the form; asked and
8 answered.

9 THE WITNESS: Yes, I believe we have gone
10 through that. But again, I'll come back to the question
11 that my determination was to terminate her without
12 cause, that I could work better with another city
13 administrator. And what you have, what we have
14 discussed previously, I've already answered.

15 Q. (BY MR. SWARTZ) You haven't identified all
16 those things that you believe --

17 A. I don't have to. I terminated her without
18 cause, so I don't need those things.

19 Q. I understand. I'm looking for -- you keep
20 using this phrase, I've identified a bunch of things
21 today that have led me to believe that I couldn't work
22 with her as an administrator. I just --

23 A. I don't believe I used that exact language.

24 MR. NAYLOR: We can go back and read from the
25 record.

Page 182

1 MR. NAYLOR: Right. But factually what are
2 you talking about? If there is anything you want to put
3 on the record as a proffer to assist, then otherwise the
4 way you've asked the question, it's objectionable.
5 MR. SWARTZ: We'll file the proffer with the
6 judge.
7 MR. NAYLOR: Okay. Then that would prevent me
8 from having an opportunity now to make a decision on how
9 to advise my client because you are withholding the
10 proffer from me.
11 MR. SWARTZ: I don't have the documents.
12 We'll file it with the judge. You guys can respond.
13 And then if we come back a different day, we'll come
14 back a different day.
15 MR. NAYLOR: Just making my record.
16 MR. SWARTZ: Yes.
17 MR. NAYLOR: We'll read and sign.
18 MR. SWARTZ: Thank you everybody for your
19 time.
20 (Deposition concluded at 4:22 p.m.)
21 (Signature requested.)
22
23
24
25

Page 183

1 CERTIFICATE OF WITNESS
2 I, DeWAYNE BRISCOE, being first duly sworn,
3 depose and say:
4 That I am the witness named in the foregoing
5 deposition, consisting of pages 1 through 185; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct, except for any changes that I may have listed
10 on the Change Sheet attached hereto:
11 DATED this ____ day of _____, 20 ____.
12
13
14
15 DeWAYNE BRISCOE
16
17 SUBSCRIBED AND SWORN to before me this ____ day
18 of _____, 20 ____.
19
20
21 NAME OF NOTARY PUBLIC
22 NOTARY PUBLIC FOR _____
23 RESIDING AT _____
24 MY COMMISSION EXPIRES _____
25

Page 184

1 ERRATA SHEET FOR DeWAYNE BRISCOE
2 Page ____ Line ____ Reason for Change ____
3 Reads ____
4 Should Read ____
5 Page ____ Line ____ Reason for Change ____
6 Reads ____
7 Should Read ____
8 Page ____ Line ____ Reason for Change ____
9 Reads ____
10 Should Read ____
11 Page ____ Line ____ Reason for Change ____
12 Reads ____
13 Should Read ____
14 Page ____ Line ____ Reason for Change ____
15 Reads ____
16 Should Read ____
17 Page ____ Line ____ Reason for Change ____
18 Reads ____
19 Should Read ____
20 Page ____ Line ____ Reason for Change ____
21 Reads ____
22 Should Read ____
23 Page ____ Line ____ Reason for Change ____
24 Reads ____
25 Should Read ____
26 You may use another sheet if you need more room.
27 WITNESS SIGNATURE _____

Page 185

1 REPORTER'S CERTIFICATE
2 I, BEVERLY BENJAMIN CSR No. 710, Certified
3 Shorthand Reporter, certify: That the foregoing
4 proceedings were taken before me at the time and place
5 therein set forth, at which time the witness was put
6 under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 6th day of June 2014.
17
18
19
20
21 BEVERLY A. BENJAMIN, CSR No. 710
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 28, 2019

ORIGINAL

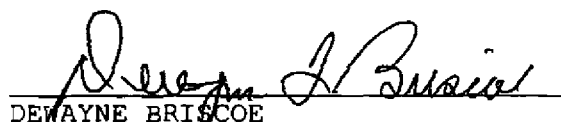
CERTIFICATE OF DEWAYNE BRISCOE

I, **DEWAYNE BRISCOE**, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition;
that I have read said deposition and know the contents thereof;
that the questions contained therein were propounded to me; and
that the answers therein contained are true and correct, except
for any changes that I may have listed on the Change Sheet
attached hereto.

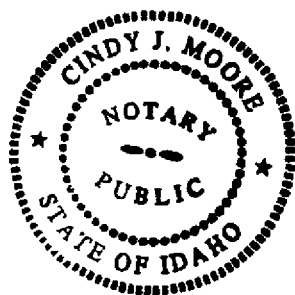
DATED this 8 day of July, 2014.


CHANGES ON ERRATA SHEET YES X NO


DEWAYNE BRISCOE

SUBSCRIBED AND SWORN to before me this 8TH day of

July, 2014.




NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR CITY OF S.W. VALLEY

RESIDING AT BLAINE COUNTY

MY COMMISSION EXPIRES 3-5-2020

36700B4 (Due July 9, 2014)

ORIGINAL

CHANGE SHEET FOR DEWAYNE BRISCOE

PAGE 97 LINE 8 REASON FOR CHANGE Misunderstood question
READS acceptable

SHOULD READ unacceptable

PAGE 97 LINE 10 REASON FOR CHANGE Misunderstood question
READS That is acceptable

SHOULD READ That is unacceptable

PAGE 97 LINE 12 REASON FOR CHANGE Misunderstood question
READS yes

SHOULD READ No

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

DEPONENT SIGNATURE: _____

Dewayne L. Briscoe

36700B4 (Due July 9, 2014)

208/345-9611

M&M COURT REPORTING SERVICE

208/345-8800 (fax)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,)
vs.) Case No.
CITY OF SUN VALLEY; NILS RIBI, in his) 1:13-CV-211-EJL
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
_____)

DEPOSITION OF MICHELLE GRIFFITH

MAY 20, 2014

REPORTED BY:

DIANA KILPATRICK, CSR No. 727, RPR

Notary Public

Page 10

Page 12

1 approves the budget, and decides on issues related to
2 land use and planning and expenditures of City funds
3 within the budget, to a certain extent. To the extent
4 that they're outside the budget, I should say. So the
5 city council sets the budget, and ensures that the
6 budget is followed, and authorizes any extraneous
7 expenditures.

8 Q. Based upon your experience, in January of
9 2012 did the city council review timecards?

10 A. In January of 2012?

11 Q. Yes.

12 A. We've never reviewed timecards.

13 Q. And in your experience, beginning in January
14 of 2012, did the city council review employee vacation
15 reporting?

16 A. We have established a finance committee, and
17 the finance committee receives a report from the
18 treasurer which indicates any payroll-related
19 expenditures which are not ordinary. For example, if
20 the police department has a lot of overtime, it's listed
21 on that report. Beyond that, we don't see the details.

22 Q. When was the finance committee established?

23 A. I don't remember. It wasn't in place
24 immediately. I think it was established maybe -- I'm
25 guessing. You told me not to guess, so I don't know.

1 and we did get a list of expenditures.

2 Q. Who would present those?

3 A. They were enclosed in our package. I assume
4 they were prepared before by the treasurer, but I don't
5 know who presented them necessarily. It was just an
6 agenda item.

7 Q. Was there a period of time where the city
8 council authorized the city treasurer to pay credit card
9 expenditures and -- in advance of a city council
10 meeting, and then the city council would later --

11 A. Not that I'm aware of.

12 Q. Maybe before your time?

13 A. Maybe.

14 Q. And you came on at a pretty interesting
15 time. I know you were receiving courtesy copies of
16 letters from James Donoval regarding Sharon Hammer, and
17 allegations being made against her, and her allegations
18 against Nils Ribi, before you even -- before you were
19 even sworn in it. Is that right?

20 A. That's correct.

21 Q. When you were sworn in, did you have an
22 understanding that Sharon Hammer had made complaints to
23 the mayor and Adam King about Nils Ribi's conduct toward
24 her?

25 A. Yes.

Page 11

Page 13

1 Q. After you started sometime?

2 A. Yes.

3 Q. When you started in January of 2012, what
4 was the procedure for approval of City expenditures?

5 A. When I started? So you're referring to the
6 period before I was -- I have no idea what they did.

7 Q. When you came on in January of 2012 --

8 A. When I came on in January of 2012, bills
9 were paid, and I was new, and I don't know how things
10 worked. It wasn't until we were seated for a period of
11 time before I became clear on exactly how things worked,
12 and at that time I believe the treasurer paid bills.

13 What the mechanism was for her to do that, I don't know.

14 Q. Did the city council approve expenditures?

15 A. The city council filed -- received and filed
16 expenditures, but we did not approve them.

17 Q. Who approved them?

18 A. I assume either the mayor or the city -- I
19 don't know, to be honest. Someone other than the
20 council.

21 Q. At city council meetings, would someone
22 present a packet of City expenditures to the city
23 council and ask them to approve them?

24 A. They did not ask for our approval. They
25 asked us to receive and file them, which is what we did,

1 Q. And when you were sworn in and took your
2 seat, did you have an understanding that Nils Ribi was
3 bringing allegations to light that he received from
4 Michelle Frostensen about Sharon Hammer's misuse of City
5 property and finances?

6 MR. NAYLOR: Object to the form.

7 THE WITNESS: When I took office? I don't
8 know. Eventually I came to that understanding, but I
9 don't know whether that happened before or after I was
10 sworn in.

11 BY MR. SWARTZ:

12 Q. And you were sworn in in January of 2012?

13 A. Yes.

14 Q. Do you know why Sharon Hammer's employment
15 was terminated?

16 MR. NAYLOR: Object to the form.

17 THE WITNESS: Yes.

18 BY MR. SWARTZ:

19 Q. What is your understanding?

20 A. She was terminated without cause in
21 accordance with her contract.

22 Q. Who first raised the idea of terminating her
23 employment?

24 A. The mayor.

25 Q. And did he explain why he was looking to

Page 14

Page 16

1 terminate her employment?

2 A. Not specifically.

3 Q. When did you first learn from the mayor that
4 he was considering terminating her employment?

5 A. I don't remember.

6 Q. Was it at a city council meeting, an
7 executive session, passing on the streets?

8 A. It wouldn't have been passing on the
9 streets. It would have either been -- and it wouldn't
10 have been in a public forum, so it could have been in
11 some executive session, and we had a lot of them during
12 that time, so I don't know which one.

13 Q. Was it -- was it disclosed in an executive
14 session, and then the decision was made at this city
15 council meeting, or was it disclosed at an executive
16 session and some time passed, and it was later disclosed
17 in the city council meeting?

18 MR. NAYLOR: Object to the form.

19 THE WITNESS: My understanding is that the
20 mayor has the authority to make that decision
21 independent of the city council. So my understanding is
22 that we were informed of the mayor's intent, and the
23 decision isn't taken in executive session. No decisions
24 are taken in executive session. So when he came to that
25 in his mind, I don't know, and the decision was formally

1 A. Roughly.

2 Q. Did he ask for your blessing on his
3 decision?

4 A. He informed us of his decision. We later --
5 we later voted on it in an open session, so to the
6 extent that you think that's a blessing, that's what
7 happened. I think the mayor, as a courtesy, advised us
8 in an executive session that he intended to terminate
9 the city administrator. In an open session, we, as a
10 council, voted.

11 Q. And that vote wasn't necessary, if I
12 understood you correctly. He could have made that
13 determination without --

14 A. I believe so. That's my understanding.

15 Q. Did he tell you why he was looking to have
16 the city council vote on it?

17 A. No.

18 Q. Did you ask?

19 A. No.

20 Q. Was it an agenda item?

21 A. I don't think so. I don't know.

22 Q. Did you vote in favor or against?

23 A. I voted in favor.

24 Q. Why did you personally vote in favor of the
25 termination?

Page 15

Page 17

1 announced in an open meeting.

2 BY MR. SWARTZ:

3 Q. And I'm trying to get an idea of whether the
4 open meeting took place on the same day as the executive
5 session, or it was several days before -- an executive
6 session was several days before the open meeting. Can
7 you recall?

8 A. I can't recall.

9 Q. And was there any discussion in the
10 executive session with the mayor about why he was
11 looking to terminate her employment?

12 A. Not specifically, no.

13 Q. How about generally?

14 A. I think -- you know, I don't want to tell
15 you what I think he said. It's a two-and-a-half-year-
16 old interpretation of -- my interpretation of his words.
17 I wouldn't pretend that they were exact words or
18 anything to that effect.

19 Q. And I'm just looking for what you recall.
20 I'm not looking for you to quote him.

21 A. The mayor -- the mayor had the right to
22 terminate the city administrator, and wanted someone who
23 he interviewed and could work with.

24 Q. And that's what he shared with the city
25 council?

1 A. I felt that the mayor would work best with a
2 direct employee whom he had interviewed, and had a part,
3 the largest part, in hiring, and I don't think that's
4 particularly unique to that city council or our city.
5 The same thing just happened in Ketchum.

6 Q. There was a press release that was issued
7 after Sharon Hammer's termination. Tab 20. It's Bates
8 No. Hammer 327. Do you recognize that?

9 A. By recognizing it, are you asking me if I
10 understand what's in front of you, or if I remember it?

11 Q. Have you seen it before?

12 A. I probably did see it, but I don't remember
13 it.

14 Q. Was the issuance of this paid ad a topic of
15 conversation in the executive session?

16 A. You said it is a press release at first.
17 Was it a press release or --

18 Q. I apologize. It was a paid ad that's
19 published in the Mountain Express, in red ink. This may
20 not be the actual size.

21 A. Okay. Sorry. I just read it. What were
22 you asking me about it?

23 Q. Just whether you recognized it.

24 A. Does recognize mean I remember it? I don't
25 remember it. It seems factual. I'm not saying that it

Page 26

Page 28

1 A. I was.

2 Q. Do you recall what happened with that claim?

3 A. No.

4 Q. Do you have any recollection of being asked
5 for approval of what to do with that claim?

6 A. When you say -- I'm not pretending that
7 something happened or didn't happen, and it's very
8 difficult to remember that far back, to be very honest
9 with you, and there was a lot going on. And this is not
10 my full-time job. I have two kids and a job and a house
11 and a husband, so where this ranges in my memory bank,
12 you know, I don't remember.

13 Q. Fair enough. Do you have any recollection
14 of Patty Ball's investigation into Sharon Hammer's
15 allegations about Nils Ribi's conduct?

16 A. I know that there was a report that was
17 produced as a result of that.

18 Q. Do you recall what the report stated?

19 A. I think the conclusion of the report was
20 that there was inconclusive evidence, or something to
21 that effect.

22 Q. Do you recall any discussions in executive
23 session or in the public forum about Nils Ribi having a
24 conflict of interest in continuing to deal with Sharon
25 Hammer and the allegations against her, in light of her

1 engaged in criminal conduct, was there any discussion
2 about terminating her employment?

3 A. No. There was discussion about finding out
4 what had really happened.

5 Q. Wasn't that Patty Ball's -- wasn't that the
6 result of her investigative report?

7 A. My takeaway from that investigative report
8 was that we were obligated to investigate what she
9 believed to be criminal activity. I did not view her
10 report as conclusive. I viewed the need for a further
11 step, which was the forensic audit. That was my
12 takeaway.

13 Q. Did anybody vote against the forensic audit?

14 A. Not that I'm aware of. Not that I recall.

15 Q. Do you recall any discussion about releasing
16 the Patty Ball report to the Blaine County prosecutor?

17 A. Do you have a choice? Would we have had a
18 choice to do that?

19 Q. I'm just asking whether you recall any
20 discussion.

21 A. I don't. Sitting here, I would say that if
22 the county prosecutor wants something, you have to give
23 it to him.

24 Q. Do you have any recollection of the City
25 turning the report over to Blaine County prosecutor?

Page 27

Page 29

1 allegations against him?

2 A. No.

3 Q. Do you know how far back the allegations of
4 Ms. Hammer's misuse of City finances went? I know they
5 came out in November of 2011. Do you know how far back
6 they went?

7 A. In Patty Ball's report, or in the forensic
8 audit?

9 Q. In Patty Ball's report. Let's start there.

10 A. No idea.

11 Q. How but forensic audit?

12 A. I want to say the forensic audit went back
13 two years, maybe three. I don't know.

14 Q. Do you know who at the City provided
15 documentation to Patty Ball regarding the allegations
16 against Sharon Hammer?

17 A. No. Patty Ball was finished by the time I
18 was sworn in, so I have no idea what happened.

19 Q. You just got a summary of the report?

20 A. I got the report. I was permitted to read
21 the report. I didn't get a copy of it, and the report
22 was presented verbally by Patty Ball.

23 Q. After the January 10th meeting, when Patty
24 Ball gave you the summary of her findings and advised
25 the city council that she believed Sharon Hammer had

1 A. I have no idea.

2 Q. Do you have any recollection of discussion
3 of making the report public?

4 A. The Patty Ball report public?

5 Q. Yes.

6 A. I don't believe that that's been done. I
7 remember discussions about making the forensic audit
8 report. I don't remember discussions about the Patty
9 Ball report being made public or not. I don't know.
10 Maybe.

11 Q. Why did you personally vote to terminate
12 Sharon's employment?

13 A. I thought the mayor would work better with
14 someone that he had a hand in interviewing and hiring.
15 And as I said before, that's not particularly
16 extraordinary. It happens -- I think the previous mayor
17 hired Sharon, and I think that the current mayor of
18 Ketchum is in the process of hiring an administrator,
19 and I think the previous mayor of Ketchum hired that
20 administrator. It seems to be the way forward for
21 mayors and administrators.

22 Q. Did you ever tell Dave Wilson that you felt
23 like the City of Sun Valley made a mistake by not
24 allowing Sharon Hammer to respond to the allegations
25 made against her in the Patty Ball report or the

Page 30

Page 32

1 forensic audit?
2 A. Dave Wilson? No. Not that I remember.
3 Q. You know who Dave Wilson is?
4 A. I do.
5 Q. Do you feel like the City made a mistake by
6 not allowing Sharon Hammer an opportunity to respond to
7 the allegations being made against her?
8 A. Well, I thought that that was the purpose of
9 the forensic audit.
10 Q. Do you know why the city council reversed
11 itself in allowing the employees to comment on that
12 forensic audit report before it was made public?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: The city council reversed
15 itself? So you'll have to explain what happened and
16 then what you view as the reversal.
17 BY MR. SWARTZ:
18 Q. Sure. When it was completed, the forensic
19 audit, the City announced that before it would be made
20 public all the employees that were mentioned in it would
21 have an opportunity to review it and make comment on it,
22 and next thing everybody knows, it was released.
23 A. I don't think that's what happened.
24 Q. Do you think employees that were mentioned
25 in that report had an opportunity to review it and

1 A. Repeat that.
2 Q. Sure. Were any of the -- any of the
3 expenses that Sharon Hammer was believed to have engaged
4 in, and were believed to have been inappropriate, were
5 any of those expenses not approved?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: I don't know. It all happened
8 before I got there.
9 BY MR. SWARTZ:
10 Q. Have you learned since January of 2012 that
11 any of those expenses weren't approved by the treasurer
12 or the city council?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: Well, there's no -- have I
15 learned since they weren't approved? No. But that
16 doesn't mean that it didn't happen, so I don't know.
17 BY MR. SWARTZ:
18 Q. Sure. I'm just asking for your personal
19 knowledge. Since January of -- I know you just took
20 your seat in January of 2012, and Sharon was terminated
21 on the 19th of 2012, and you may not have had a chance
22 to interact much with her, because she was on leave, and
23 there for a limited period of time -- did you ever see
24 Nils Ribi interact with Sharon Hammer?
25 A. Not in a way that stands out in my mind. I

Page 31

Page 33

1 comment on it?
2 A. I think the mayor saw every single one of
3 those employees. I think he spent weeks in meetings.
4 Q. Do you think that also included Sharon?
5 A. Presumably. I don't know.
6 Q. Going back to that press release, Bates --
7 A. Press release or advert?
8 Q. Yes. It's an advertisement, 327. Do you
9 know who paid for that?
10 A. I would assume the City, but I don't know
11 that for a fact.
12 Q. How many times since January of 2012 have
13 you seen the City pay for an advertisement in the Idaho
14 Mountain Express, publicizing the termination of an
15 employee's employment?
16 A. I don't even remember this one, so if there
17 are 15 more in here, and you show them to me, I will
18 believe that they were accurate, but I don't remember
19 any of them.
20 Q. Do you recall any discussion in an executive
21 session about placing a paid ad --
22 A. No. I don't recall a discussion about it.
23 Q. Have you ever come to know, in any of the
24 expenses that Sharon Hammer was involved in, and that
25 were allegedly inappropriate, that went unapproved?

1 mean, I don't remember what happened between the first
2 and 19th, whether we had meetings and we were all there.
3 I don't even remember.
4 Q. Ms. Griffith, I think that's all I have for
5 you today. That was painless, huh?
6 MR. NAYLOR: Let's take a quick break.
7 (A Break Was Taken.)
8 EXAMINATION
9 QUESTIONS BY MR. NAYLOR:
10 Q. Michelle, when you voted to approve the
11 mayor's decision to terminate Sharon Hammer's contract,
12 that was with cause or without cause?
13 A. It was without cause.
14 Q. And do you recall what your understanding
15 was at that time, why it was without cause?
16 A. I thought that the mayor needed to interview
17 and hire his own -- bad phraseology, but I can't phrase
18 it any better than that on the fly -- city
19 administrator.
20 Q. To the allegations of misconduct, criminal
21 conduct, did any of that factor into your decision to
22 terminate Sharon Hammer's --
23 A. None. That was clear. They were only
24 allegations at that time.
25 Q. Do you recall how the forensic audit was

Page 34

1 made public?
2 A. I think that the county prosecutor made it
3 public, I think.
4 MR. NAYLOR: That's it. That's all the
5 questions I have.
6 (Deposition Concluded at 2:31 p.m.)
7 (Signature Was Requested.)
8 *****
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CHANGE SHEET FOR MICHELLE GRIFFITH

Page ___ Line ___ Reason for Change

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Please use a separate sheet if you need
more room.

WITNESS SIGNATURE _____

Page 37

REPORTER'S CERTIFICATE

1 I, DIANA KILPATRICK, CSR No. 727, Certified
2 Shorthand Reporter, certify;

3 That the foregoing proceedings were taken before
4 me at the time and place therein set forth, at which
5 time the witness was put under oath by me;

6 That the testimony and all objections made were
7 recorded stenographically by me and were thereafter
8 transcribed by me, or under my direction;

9 That the foregoing is a true and correct record
10 of all testimony given, to the best of my ability;

11 I further certify that I am not a relative or
12 employee of any attorney or party, nor am I financially
13 interested in the action.

14 IN WITNESS WHEREOF, I set my hand and seal this
15 30th day of May, 2014.

16
17
18
19
20
21 DIANA KILPATRICK, CSR, RPR
22 Notary Public

23 Hailey, Idaho 83333

24 My Commission expires January 13, 2017
25

ORIGINAL

CERTIFICATE OF MICHELLE GRIFFITH

I, **MICHELLE GRIFFITH**, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition;
that I have read said deposition and know the contents thereof;
that the questions contained therein were propounded to me; and
that the answers therein contained are true and correct, except
for any changes that I may have listed on the Change Sheet
attached hereto.

DATED this 4th day of June, 2014.

CHANGES ON ERRATA SHEET YES _____ NO ☒

Michelle Griffith
MICHELLE GRIFFITH

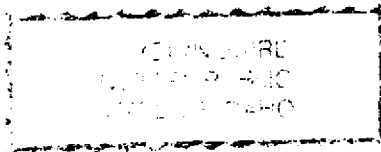
SUBSCRIBED AND SWORN to before me this 4 day of June,
2014.

Carolyn Davis
NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR Idaho

RESIDING AT Hailey

MY COMMISSION EXPIRES 1/23/2015



35182B4 (Due July 6, 2014)

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,)
vs.) Case No.
CITY OF SUN VALLEY; NILS RIBI, in his) 1:13-CV-211-EJL
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
)

MAY 20, 2014

Notary Public

Page 26

1 saying, to try to approach a system that was
2 straightforward, whenever a problem was brought up, that
3 we tried to resolve it. If it was in the policy, we
4 tried to modify and edit that policy so it would work
5 better. So I can't remember the wording of that, so I'd
6 have to review it, review the exact wording to see if I
7 would, once again, interpret it as meaning that the city
8 administrator would interpret all policies. I don't
9 know. Like said, I'd have to read it.

10 Q. That's not an understanding that you had
11 while you were sitting as a city council member?

12 A. No. I didn't think that any one person
13 would be the interpretive authority on policy, that we
14 were all trying to have good policies, and ones that
15 worked for the City, and that the interpretation, as I
16 said multiple times, would be straightforward. There
17 would be no need for interpretation.

18 Q. That's the goal. Right?

19 A. That's the goal. Whether or not you achieve
20 that is pretty much a gradual, slow, refinement-type
21 process.

22 Q. Did you vote to terminate Sharon Hammer's
23 employment?

24 A. We consented to a decision that can only be
25 made by the mayor. That was my understanding when we

Page 28

1 meeting the first time that it was raised?

2 A. I'd been made aware from Mayor Briscoe that
3 he was having difficulty working with Sharon, prior to
4 that meeting.

5 Q. What was the difficulty that Mayor Briscoe
6 was having?

7 A. He just said he was having trouble working
8 with her.

9 Q. When did he take office?

10 A. Somewhere very early, January 3rd,
11 January 2nd, something like that.

12 Q. So between January 3rd and January 19th, you
13 were made aware that Mayor Briscoe was having a
14 difficult time working with Sharon Hammer?

15 A. Yes.

16 Q. Did he elaborate on what he meant?

17 A. No. Didn't elaborate.

18 Q. Did you ask?

19 A. It was a very informal conversation, and I
20 didn't feel comfortable, you know -- I was never
21 comfortable with details of what personnel issues might
22 be. I didn't run for office to be involved with
23 personnel issues. I ran for office to be what I was
24 elected to be, as a policy maker. So I actively
25 avoided, you know, any kind of real involvement with

Page 27

1 consented to the termination of the employment contract.

2 Q. What does it mean to consent? Does the
3 mayor have to get your consent?

4 A. No. He just wanted it.

5 Q. And did you give your consent?

6 A. Yes. I voted in favor, to consent to the
7 termination of the employment contract.

8 Q. And this was Mayor Briscoe at the time?

9 A. Yes.

10 Q. Who wanted to terminate the contract and
11 wanted the city council's consent?

12 A. Yes. Correct.

13 Q. Was the consent of the council unanimous, do
14 you recall?

15 A. Yes, it was.

16 Q. Was the vote taken in executive session?

17 A. No.

18 Q. Was it taken in a public session?

19 A. Yes, it was.

20 Q. Was there a discussion -- was that the
21 January 19th, 2012 meeting?

22 A. That -- the exact date, I don't know, but it
23 would be right about that time period, yes.

24 Q. Was there any discussion before that meeting
25 about the termination of her employment, or was that

Page 29

1 personnel matters, administrative matters of the City.
2 It wasn't my purview to do so. It wasn't my authority.
3 Someone could ask for my advice, but I was never
4 actively involved.

5 I was listening to the person who had to
6 work with the person, and I took that as input.

7 Q. Prior to giving your consent to terminate
8 Sharon Hammer's employment, did you have an
9 understanding that there were allegations made about her
10 misuse of City money?

11 A. Yes. There were allegations on the table.

12 Q. Did you believe those allegations to be true
13 when you consented to terminate her employment?

14 MR. NAYLOR: Object to the form.

15 THE WITNESS: I didn't believe anything at
16 that point. I wanted evidence.

17 BY MR. SWARTZ:

18 Q. Did you have evidence at that point?

19 A. No. We had the beginnings of an
20 investigation, or data presented by the treasurer. That
21 was it.

22 Q. As of January 19th?

23 A. That I had available to me, yes. That I
24 became aware of.

25 Q. What was the scope of the allegations that

Page 78

Page 80

1 Q. I know she brought allegations forward in
2 November 2011, but what was the look-back period, do you
3 recall?

4 A. Well, if you go back to my notes, she was
5 looking back as far as '08, apparently, because she has
6 a note here in July of '08 that there were 40 hours of
7 vacation that Sharon had taken, so I would say back to
8 2008.

9 Q. Did you ever ask why Michelle Frostensen
10 waited so long to bring those allegations forward?

11 MR. NAYLOR: Object to the form.

12 THE WITNESS: I did not ask her that
13 question.

14 BY MR. SWARTZ:

15 Q. Do you have any idea why she chose to go all
16 the way back to 2008?

17 MR. NAYLOR: Object to the form. Calls for
18 speculation.

19 THE WITNESS: The answer is, I don't know,
20 nor could I speculate.

21 BY MR. SWARTZ:

22 Q. Do you recall allegations that Ms. Hammer
23 had falsified public records ever being discussed in
24 executive session?

25 A. No.

Page 79

Page 81

1 Q. Was it ever discussed in executive session
2 whether Michelle Frostensen should be investigated for
3 the approval of these expenditures that were now being
4 characterized as being inappropriate?

5 A. I don't remember discussing that. There was
6 an ongoing investigation, so I personally didn't have
7 the data to give any direction there.

8 Q. Do you recall whether the city council ever
9 authorized Nils Ribi to disclose what took place in an
10 executive session in the public record?

11 MR. NAYLOR: Object to the form.
12 Foundation.

13 THE WITNESS: My recollection is we would
14 never -- I would never approve of that. At the time I
15 felt like the executive sessions were to be private. I
16 later found out, in my education with the attorney
17 general, that they depend on things leaking out.

18 BY MR. SWARTZ:

19 Q. They depend on things leaking out of
20 executive session?

21 A. They stated -- I was surprised. They said
22 certain things should be leaked. They said that. I
23 couldn't believe it. I still don't believe it. I don't
24 think it's correct, but that's my opinion, it's not the
25 opinion of the attorney general.

1 Q. Do you have any recollection of the city
2 council authorizing Mr. Ribi to disclose what transpired
3 in an executive session to his personal attorney, Keith
4 Roark?

5 MR. NAYLOR: Object to the form.
6 Foundation.

7 THE WITNESS: I don't recall approving
8 anything that had to do with informing anybody outside
9 those present in the executive session and those that
10 were directly impacted by the executive session to be
11 informed.

12 BY MR. SWARTZ:

13 Q. Other than allowing Sharon Hammer to be
14 presented with the allegations that we talked about
15 earlier when Mayor Willich and Adam King came to her and
16 presented her with the allegations and gave her a chance
17 to admit or deny them, did the city council discuss
18 giving her an opportunity to respond to the allegations,
19 present her own data, anything along those lines?

20 A. That was my expectation, that our advice at
21 the time was to talk to Sharon about the allegations and
22 get a response, and probably the response would be,
23 Well, it's not true, and this is why.

24 That was my expectation that the council --
25 not council, but the mayor would receive this, and the

1 mayor could decide how he would interact with the
2 council on that one, on those responses. But I never
3 was exposed to any response, written, other than the
4 verbal denial of charges of all allegations. That was
5 what I was informed about.

6 Q. Did you ever observe Mr. Ribi interact with
7 Ms. Hammer in a way that you believe was -- let me ask
8 it this way. Did you ever see Nils Ribi raise his voice
9 to Sharon Hammer?

10 A. When you say raise his voice, I mean, what
11 do you mean by that? Because it could either mean -- it
12 could mean a number of things. What exactly do you
13 mean?

14 Q. Raise his voice beyond normal speaking
15 level.

16 A. For Mr. Ribi, no. His speaking level was
17 all very -- at a high volume. That's the way he speaks.

18 Q. Did you ever see Mr. Ribi approach
19 Ms. Hammer in a threatening way?

20 A. I have not.

21 Q. Do you have any idea when Mayor Briscoe made
22 the decision that he wanted to terminate Ms. Hammer's
23 employment?

24 A. As I said earlier, I had an informal, brief
25 conversation where he said he had great difficulty

Page 82

1 working with her, and then we had executive session
2 where he was asking for our consent to terminate the
3 contract.

4 Q. It was in executive session, or it was done
5 in the public portion of the meeting?

6 A. The consent was -- we can only vote in
7 public session. It's illegal to vote in executive
8 session. So the vote was in the public section, but the
9 discussion, his reasons for wanting to terminate the
10 contract was in executive session.

11 Q. Tell me about his reasons.

12 A. That he had great difficulty working with
13 her, and that he thought it would be best if we moved
14 on. Best for everyone.

15 Q. Do you recall anything else from that
16 executive session?

17 A. No. That was basically the subject of it.

18 Q. Did anybody disagree with his recommendation
19 for terminating her employment?

20 A. Not that I remember. Based on each
21 individual had their reasons why they were consenting.
22 Mine was that he could not work with her. I couldn't
23 further, nor would I want to, find out all the details
24 of that. He's just telling me as a manager he can't
25 work with this person, will you please consent so that I

Page 83

1 feel comfortable terminating the contract.

2 Q. What were the other council members' reasons
3 for consenting?

4 A. I wouldn't know.

5 Q. They weren't discussed?

6 A. I mean, I'd have to go and ask them, what
7 was your reason in the end? Who knows for certain. I
8 can't say. It's total speculation on my part.

9 Q. It wasn't discussed?

10 A. No. Not in a direct way.

11 Q. Not in a direct way?

12 A. Nobody said, I am doing this for this
13 reason. There was a general discussion, and then there
14 was a vote in the public part of the session.

15 Q. Have you ever come to learn of any act of
16 misconduct that Ms. Hammer engaged in during her
17 employment?

18 MR. NAYLOR: Object to the form.

19 THE WITNESS: I'm not remembering the
20 details of the investigative reports as it relates to
21 Sharon. I'd have to review those reports to be able to
22 answer that question. That's what I'd have -- what I
23 say on that.

24 BY MR. SWARTZ:

25 Q. And I'm not asking for the details. I'm

Page 84

1 just curious if you have any personal belief that Sharon
2 did anything wrong during her employment.

3 A. You know, it comes down to what is wrong,
4 and I'm reticent to be a judge of that, so I just do not
5 have a position, without -- I'm a database person. I
6 don't have the data in front of me, and I can't feel
7 comfortable saying yes, particularly yes to that
8 question, without the data in front of me.

9 Q. So as you sit here today you have no
10 recollection of Ms. Hammer having done anything wrong as
11 an employee of the City of Sun Valley?

12 A. Like I said, it depends on what's considered
13 wrong, and I'd need to review that.

14 Q. Do you have any recollection of Ms. Hammer
15 having misused City funds?

16 A. Not that I could say right now.

17 Q. Did she misuse City property?

18 A. I would, once again, have to review the
19 reports where the data lies on these issues. A lot of
20 this, for me, was put aside when the termination --
21 mentally was put aside when the termination occurred.

22 Q. Meaning you forgot about it after her
23 employment was terminated?

24 A. It wasn't something that I was thinking
25 about anymore. It had been a while, so I would have to

Page 85

1 review the reports and decide, yes, that was wrong, and
2 this was okay, or whatever the case may be. I wouldn't
3 want to speculate on that. That would be unfair.

4 Q. Do you have any recollection of disagreeing
5 with anything that was in the investigative report?

6 A. No. Because I'm ignorant of the
7 administration of the City. It wasn't part of my job,
8 and it was all about the administration of the City.

9 Q. Do you recall Kelly Ek filing a tort claim
10 against the City of Sun Valley?

11 A. I was informed that a tort claim had been
12 filed.

13 Q. Do you know what happened to resolve that?

14 A. No. I was informed that a settlement had
15 been reached. I had no involvement whatsoever.

16 Q. Would that be the same with respect to
17 Michelle Frostensen's tort claim that she filed?

18 A. That's correct.

19 MR. SWARTZ: I think, with reserving the
20 right to come back once we get our privilege log, and
21 nonresponsive log, I think we can wrap it up for today.
22 Mr. Naylor may have some questions for you.

23 MR. NAYLOR: Let's take a quick break.
24 (A Break Was Taken.)

25 ///

REPORTER'S CERTIFICATE

I, DIANA KILPATRICK, CSR No. 727, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
29th day of May, 2014.

Diana Kilpatrick

DIANA KILPATRICK, CSR, RPR

Notary Public

Hailey, Idaho 83333

My Commission expires January 13, 2017

CHANGE SHEET FOR ROBERT YOUNGMAN

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more room.

WITNESS SIGNATURE _____

ORIGINAL

CERTIFICATE OF ROBERT YOUNGMAN

I, ROBERT YOUNGMAN, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition;
that I have read said deposition and know the contents thereof;
that the questions contained therein were propounded to me; and
that the answers therein contained are true and correct, except
for any changes that I may have listed on the Change Sheet
attached hereto.

DATED this 7th day of July, 2014.

CHANGES ON ERRATA SHEET YES NO X

Robert Youngman
ROBERT YOUNGMAN

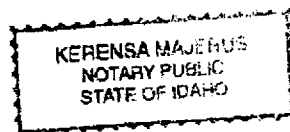
SUBSCRIBED AND SWORN to before me this 7th day of July,
2014.

Kerensa Majerus
NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR Ketchum, ID

RESIDING AT Ketchum

MY COMMISSION EXPIRES 6-23-15



35183B4 (Due July 6, 2014)

208/345-9611

M&M COURT REPORTING SERVICE

208/345-8800 (fax)

ORIGINAL

CHANGE SHEET FOR ROBERT YOUNGMAN

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DEPONENT SIGNATURE: Rebekah A. Green 7 July 2014
35183B4 (Due July 6, 2014)

208/345-9611 M&M COURT REPORTING SERVICE 208/345-8800 (fax)

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,)
vs.) Case No. 1:13-CV-211-EJL
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
)

MAY 21, 2014

Notary Public

Page 14

1 Q. What do you mean when you received one side of
2 the story for several weeks?
3 A. This is it.
4 Q. Okay.
5 A. Yeah. I was not allowed into anything that
6 was going on in city hall.
7 Q. Not until you were sworn in?
8 A. Not till I was sworn in.
9 Q. So any meetings that you would have attended
10 on the other side of the story would have occurred after
11 January of 2012?
12 A. Right.
13 Q. Do you recall what Mayor Briscoe discussed
14 with the city council about his desire to terminate
15 Sharon Hammer's employment?
16 A. Not exactly. But it was my understanding at
17 the time, and still is, that the city supervisor serves
18 at the pleasure of the mayor. And it's not unusual for
19 mayors to want to bring in people that they think they
20 can work with, which includes the fire chief, the police
21 chief, et cetera. I believe that the city council has
22 only jurisdiction over the non -- the people other than
23 in those positions, unless the mayor brings them into
24 it. That was my understanding at the time.
25 Q. And I need you to help me understand just a

Page 15

1 bit more. Did he explain to the city council why he was
2 looking for the city council's consent to his proposed
3 termination of Sharon Hammer's employment?
4 A. There was numerous discussions. And there was
5 also an education process for me. But my -- at that
6 time my knowledge was that the mayor did not need our
7 consent, if he so chose. But as a courtesy, it's a good
8 idea for a mayor to bring in the city council on these
9 matters.
10 Q. Did Mayor Briscoe describe, explain, elaborate
11 upon why he wanted to terminate Sharon's employment?
12 A. Not to me personally. And there was so many
13 meetings in there that I can't recall what took place at
14 any specific meetings. We had -- I believe we had 52
15 meetings of the city council in a period of six months.
16 Q. Did any of the meetings before the termination
17 of Sharon Hammer's employment include discussions about
18 misconduct that Ms. Hammer was alleged to have engaged
19 in?
20 A. I believe the Hammers told me the misconduct
21 she was alleged to have engaged in, and they were heavy
22 on alleged, but they explained that to me. Because we
23 had long conversations at my house on three or four
24 occasions.
25 Q. Did any of the executive sessions between you

Page 16

1 taking office and the termination of Sharon Hammer's
2 employment involve any discussions about that misconduct
3 that she was alleged to have engaged in?
4 A. Possibly, but I don't recall specifically,
5 because we were getting information from all kinds of
6 sources. The ex-mayor was active in providing
7 information unsolicited.
8 THE COURT REPORTER: Did you say "unsolicited"
9 or "solicited"?
10 THE WITNESS: Unsolicited. For the most part.
11 Q. (BY MR. SWARTZ) This is a December 27, 2011,
12 memorandum to Mayor Willich and the Sun Valley City
13 Council from Sharon Hammer. It's the first page of what
14 you brought today. And there's a notation at the top
15 right-hand corner that says, "What would have to happen
16 for Mayor Briscoe to fire Sharon?"
17 A. Right.
18 Q. Do you see that?
19 A. Yeah.
20 Q. Can you tell me about that comment?
21 A. That was my question. As I recall, Mayor
22 Willich suspended Sharon Hammer. Sharon Hammer was then
23 reinstated by Mayor Willich. When Mayor Briscoe took
24 office, Mayor Briscoe suspended Sharon Hammer. So my
25 question here is, if he wanted to terminate her, what

Page 17

1 would have to happen.
2 Q. Did you have your question --
3 A. That was the question for me, that I asked
4 myself in making these notations.
5 Q. Did you have your question answered by anyone?
6 A. I don't know if it was answered by anyone.
7 But we're very restricted on what we do by the state
8 open meetings law in talking with other members in the
9 council, and so forth. The present members of the
10 council weren't too helpful to me in becoming involved
11 in this thing or acquainted. It was sort of a
12 learn-as-you-go. And so at some point, either through
13 my research or some other way, I came to the conclusion
14 that the mayor had the right to terminate the city
15 supervisor, according to her contract, as the contract
16 was defined to me by the city attorney.
17 Q. Who was the attorney that you spoke to about
18 the contract?
19 A. I believe it was the city attorney.
20 Q. Who was that?
21 A. Adam King.
22 Q. And did you go to Adam King individually or
23 was this a meeting?
24 A. It might have been -- it wasn't
25 individually -- it might have been prior to a council

Page 58

1 were against Mr. Ribí and Mr. Youngman?
2 A. I do.
3 Q. What were those?
4 A. She -- as I understand, she accused Mr. Ribí
5 of harassment. I don't know specifically with Mr.
6 Youngman. I was pretty much in the dark what had
7 transpired before my swearing in. All I knew was what I
8 had read. And there's very little discussion of it.
9 And as you know, you can't discuss something with one
10 councilman and then discuss the same thing with another
11 councilman separately. That's a serial meeting.
12 MR. SWARTZ: Okay. I don't think I have
13 anything further.
14 (Deposition concluded at 10:38 a.m.)
15 (Signature requested.)
16
17
18
19
20
21
22
23
24
25

Page 59

1 CERTIFICATE OF WITNESS
2 I, FRANZ M. SUHADOLNIK, being first duly sworn,
3 depose and say:
4 That I am the witness named in the foregoing
5 deposition, consisting of pages 1 through 61; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct, except for any changes that I may have listed
10 on the Change Sheet attached hereto:
11 DATED this _____ day of _____,
12
13 CHANGES ON ERRATA SHEET YES _____ NO _____
14
15 _____
16 FRANZ M. SUHADOLNIK
17 SUBSCRIBED AND SWORN to before me this _____ day
18 of _____,
19
20
21 NAME OF NOTARY PUBLIC
22 NOTARY PUBLIC FOR _____
23 RESIDING AT _____
24 MY COMMISSION EXPIRES _____
25

Page 60

1 ERRATA SHEET FOR FRANZ M. SUHADOLNIK
2 Page _____ Line _____ Reason for Change _____
3 Reads _____
4 Should read _____
5
6 Page _____ Line _____ Reason for Change _____
7 Reads _____
8 Should read _____
9
10 Page _____ Line _____ Reason for Change _____
11 Reads _____
12 Should read _____
13
14 Page _____ Line _____ Reason for Change _____
15 Reads _____
16 Should read _____
17
18 Page _____ Line _____ Reason for Change _____
19 Reads _____
20 Should read _____
21
22 Page _____ Line _____ Reason for Change _____
23 Reads _____
24 Should read _____
25 You may use another sheet if you need more room.
WITNESS SIGNATURE _____

Page 61

1 REPORTER'S CERTIFICATE
2 I, JAHNENE ADMIRE, CSR No. 760, Certified
3 Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth, at
6 which time the witness was put under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 28th day of May, 2014.
17
18 *Jahnene admire*
19
20
21 JAHNENE ADMIRE, CSR 760
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 04, 2018

ORIGINAL

CERTIFICATE OF FRANZ M. SUHADOLNIK

I, FRANZ M. SUHADOLNIK, being first duly sworn, depose and say:

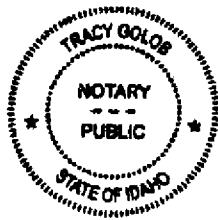
That I am the witness named in the foregoing deposition;
that I have read said deposition and know the contents thereof;
that the questions contained therein were propounded to me; and
that the answers therein contained are true and correct, except
for any changes that I may have listed on the Change Sheet
attached hereto.

DATED this 23 day of June, 2014.

CHANGES ON ERRATA SHEET YES ☒ NO ☐

Franz M. Suhadolnik
FRANZ M. SUHADOLNIK

SUBSCRIBED AND SWORN to before me this 23 day of June,
2014.



Tracy Golob
NAME OF NOTARY PUBLIC
NOTARY PUBLIC FOR Idaho
RESIDING AT Turn Falls
MY COMMISSION EXPIRES 10-19-2016

35184B4 (Due June 30, 2014)

208/345-9611

M&M COURT REPORTING SERVICE

208/345-8800 (fax)

ORIGINAL

CHANGE SHEET FOR FRANK M. SUBADOLNIK

PAGE 7 LINE 5 REASON FOR CHANGE I did NOT ACCEPT CK.
READS I AM HANDING YOU YOUR CK. FOR STATUTORY
SHOULD READ WITNESS Fee OF \$40.00

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

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READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

DEPONENT SIGNATURE: Frank M. Subadolnik
35184B4 (Due June 30, 2014)

208/345-9611

M&M COURT REPORTING SERVICE

208/345-8800 (fax)

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,) Case No. 1:13-cv-211-EJL
vs.)
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
)

MAY 30, 2014

Notary Public

Page 26

1 of institutional problems going on within the city
2 administration and the management of the City.
3 Q. Did you suspect that at the time?
4 A. No.
5 Q. What are you saying, we are correct; correct
6 about what?
7 A. For going forward with the audits, the reason
8 for the audits.
9 Q. What was the reason for the audit?
10 A. The Patty Ball report.
11 MR. SWARTZ: Give me a second. I have another
12 binder I need to grab.
13 (Off the record.)
14 Q. (BY MR. SWARTZ) Mr. Ribí, as I understand it,
15 Michelle Frostenson came to you on -- she texted you on
16 November 10, 2011 and asked you to call her. Do you
17 recall that?
18 A. That's correct.
19 Q. Do you recall what she told you when you
20 returned her text message?
21 A. I did not return her text message.
22 Q. By phone, I presume you returned it by calling
23 her as she requested.
24 A. Yes. When I received her text message, I was
25 in a local emergency planning meeting. She texted me, I

Page 27

1 believe, around 11:00 in the morning. Ms. Hammer was
2 also in that same meeting, she was sitting right in
3 front of me, as a matter of fact, and we spoke about
4 some things that had come up in that meeting that
5 related to the City and just had a nice discussion.
6 I saw the text then at the end of the meeting,
7 and I left the meeting. And since I was headed towards
8 City Hall to go get my mail, I called Michelle and said,
9 What's up? And she said, I need to talk to you. I
10 said, Well, I'm headed toward City Hall, let's talk.
11 And she said, No, I don't want to talk to you at City
12 Hall. I said, Where do you want to talk? She said,
13 Some place private. I said, Okay. And I tried to think
14 of some place.
15 And on the way to the mail is a place over by
16 Wildflower Condominiums that is just kind of over this
17 little knoll, it's a little park area. So I said, Why
18 don't we meet there. She said, Fine. So that is where
19 we met.
20 Q. Was November 10 a weekend?
21 A. I think it was the day before Veterans Day, so
22 whatever day that was. It would have been a Thursday,
23 because the LEPC meets on Thursdays.
24 Q. So her text came to you on a Thursday?
25 A. Yes, at about 11:00 in the morning.

Page 28

1 Q. And she was in town or --
2 A. She must have been, because I met her probably
3 around noon when the meeting was over, the LEPC meeting
4 was over.
5 Q. When you met with Ms. Frostenson in the park,
6 what did you learn?
7 A. She told me that she had something that she
8 wanted to speak to the city council, and I asked her
9 what it was about. And she told me that she had gone to
10 Mayor Willich in October with some information and he
11 had not done anything about it. And so I said, Well,
12 what is it? And she started telling me.
13 And I said, Wait a minute here, this is all
14 news to me. Whatever it is that you want to tell me you
15 need to tell this to the whole council. And I said, If
16 the rest of the council wants to have an executive
17 session, that's what would be appropriate. And I said,
18 But I don't want to say anything to the other council
19 members unless this is serious. If this is just minor
20 stuff, don't waste our time.
21 She convinced me it was serious and she gave
22 me an overview. And I told her, I said, If the rest of
23 the council wants to have a meeting, you need to be
24 prepared with data and documentation. And then we left
25 it at that.

Page 29

1 Q. When she began to give you an overview, what
2 did she state to you?
3 A. She just gave me an overview of kind of what
4 she presented at the executive session the next day.
5 Q. Did she have any documents with her?
6 A. No.
7 Q. What do you recall that she told you while you
8 were meeting in the park?
9 A. She gave me an overview of the vacation
10 issues, the use of the car issue, the credit card issue,
11 the BLM issue, and then a couple of others I can't
12 remember off the top of my head. I didn't take any
13 notes, I was just listening.
14 Q. What was the vacation issue that she relayed
15 to you in the park?
16 A. The same one that was discussed at the city
17 council meeting on the 11th.
18 Q. What was that?
19 A. What was that?
20 Q. Yes.
21 A. The time off issue that she discussed in
22 detail at the council meeting.
23 Q. I'm just asking you what is that, what is the
24 vacation issue, the time off issue?
25 A. What is it?

Page 30

1 Q. Yes. Can you describe what she described to
2 you the vacation issue was?

3 A. I can't remember exactly what she said at that
4 particular meeting on the 10th, but it was related to
5 the vacation issue.

6 Q. Did it involve a particular employee?

7 A. Yes.

8 Q. What employee?

9 A. Sharon Hammer.

10 Q. Any other employees?

11 A. It may have involved other employees. I can't
12 remember specifically on that particular day.

13 Q. What was the credit card issue that she spoke
14 to you about on the 10th of November?

15 A. Same thing.

16 Q. What was that?

17 A. What do you mean "what was that"?

18 Q. What did she describe to you was the serious
19 issue with the credit card?

20 A. The unauthorized use of the credit card for
21 personal use.

22 Q. Who did she allege was utilizing the credit
23 card in that manner?

24 A. Sharon Hammer.

25 Q. Any other employees?

Page 31

1 A. She may have. I don't know. Again, it was an
2 overview and it was on that particular day, and I didn't
3 take any notes.

4 Q. Did she relay to you how much she believed
5 Sharon Hammer had spent without authorization?

6 A. I can't remember.

7 Q. Whether she gave you a figure or not?

8 A. I can't remember on that particular day.

9 Q. What was the BLM issue?

10 A. It had to do with something about modification
11 of time and adjustment of times of some employee in
12 order to gain additional money for the City or something
13 like that.

14 Q. Did she attribute whatever that was to Sharon
15 Hammer?

16 A. It's possible, yes.

17 Q. Are you guessing or do you remember
18 specifically?

19 A. I believe that's what was said.

20 Q. Did she have any allegations about any other
21 employee on the 10th other than Sharon Hammer?

22 A. It's possible, yes.

23 Q. Do you remember any?

24 A. I don't remember.

25 Q. What is it about what she said that led you to

Page 32

1 believe it was serious enough that you were going to not
2 waste the council's time and reach out to them and call
3 an executive session?

4 A. Based on what she told me it sounded very
5 serious. It sounded like something that, especially
6 since the mayor had not taken any action on it, the
7 council needed to hear this. I took it very serious.
8 This was our fiduciary duty to the taxpayers to deal
9 with this, to at least hear it.

10 Q. Why the urgency of calling the meeting the
11 next day, the 11th?

12 A. Because we had just learned about it. This is
13 not something you sit on. You take action. You hear
14 it, you take action, let's move on it.

15 Q. Even if it was a dollar alleged to have been
16 misspent?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: Could you repeat that question.

19 Q. (BY MR. SWARTZ) Did you have any idea of how
20 much Ms. Frostenson was alleging was at issue?

21 A. I don't know if she gave me specific dollar
22 amounts, but it appeared there was significant dollar
23 amounts involved.

24 Q. Appeared based upon what?

25 A. Based upon what she told me.

Page 33

1 Q. So she gave you some numbers of some sort.

2 A. Of some sort, yes. And it sounded like
3 significant taxpayer money involved.

4 Q. How long did your meeting on the 10th with
5 Michelle last?

6 A. I didn't keep track of time, but I'm guessing
7 it was 15 minutes to half an hour.

8 Q. When you told Michelle that she needed to have
9 data and documents to back up her allegations, did she
10 indicate that she had some?

11 A. I believe she told me that she could put
12 together that information.

13 Q. Was it your impression that it wasn't already
14 put together?

15 A. Well, I believe what she said was she could
16 put that together for the meeting.

17 Q. Did she indicate whether she already had
18 materials that supported her allegations?

19 A. I believe she gave me that impression, yes.

20 Q. What did you do following your 15 to 30 minute
21 meeting with Michelle in the park?

22 A. I then contacted Council -- let me think --

23 Council Member or Council President Briscoe, I can't
24 remember at that point. I think Council Member Briscoe
25 was council president at that point by phone and then

Page 34

Page 36

1 Council Member Youngman by phone. I couldn't reach
2 Council Member Lamb, she apparently was out of town and
3 was not available.

4 Q. What did you state to Mayor Briscoe when you
5 contacted him?

6 A. I said to him that I had just been contacted
7 by Michelle Frostenson and that she had given me
8 information that was very important regarding a
9 personnel matter and that we needed to meet as soon as
10 possible. And realized that we had a 24 hour notice
11 provision, and I would also be contacting Council Member
12 Youngman and Council Member Lamb and seeing what we
13 could do to make arrangements to have a special
14 executive session.

15 I also indicated that it would probably be
16 best if we had council members call the special meeting
17 rather than asking Mayor Briscoe, since he obviously
18 could be possibly involved in this.

19 Q. Mayor Briscoe?

20 A. Excuse me. Mayor Willich, since he may be
21 possibly involved in this since he didn't want to do
22 anything about it.

23 Q. How do you know that Mayor Willich didn't want
24 to do anything about it?

25 A. Because, as I spoke to you earlier, I told you

1 probably not quite the right way to phrase it.

2 I guess, bluntly, it was allegations that an
3 employee had stolen money from the City; is that fair?

4 MR. NAYLOR: Object to the form.

5 THE WITNESS: That is your interpretation.

6 Q. (BY MR. SWARTZ) Is that a fair interpretation,
7 is that the way you understood it as a fiduciary, that,
8 Oh, wow, we have somebody who is taking money from the
9 City and they are not authorized to do it?

10 A. No. It was my interpretation that there is
11 some allegations here, we need to hear what this is
12 about.

13 Q. And it involved an employee and it involved
14 misuse of funds and City equipment.

15 A. Potentially.

16 Q. Tell me about your phone call with
17 Mr. Youngman.

18 A. Same as with Mayor Briscoe -- or excuse me,
19 Council President Briscoe.

20 Q. When you reached out to Joan Lamb, did you
21 leave her a voicemail, did you send her an e-mail,
22 anything like that?

23 A. I couldn't reach her. I did not send her an
24 e-mail.

25 Q. You tried to call her?

Page 35

Page 37

1 that she had approached him with this same information
2 in October and he had not done anything about it.

3 Q. Did you do anything to confirm that?

4 A. No. But that was something we were going to
5 bring up, and obviously I felt that we would bring it up
6 in the executive session.

7 Q. Was to ask Mayor Willich whether he did
8 anything in response to the allegations?

9 A. Correct.

10 Q. Did you elaborate on what the personnel matter
11 was that you referred to when you spoke to Mayor
12 Briscoe?

13 A. No.

14 Q. Did you ask?

15 A. No.

16 Q. Was it a personnel matter or was it a
17 financial issue?

18 A. It sounded like a personnel matter to me.

19 Q. Why did you characterize it as that?

20 A. Because it involved personnel.

21 Q. It involved personnel doing something they
22 should not have done?

23 A. That was the allegation that Michelle
24 Frostenson made.

25 Q. So it was more of a failure or a -- that's

1 A. I believe I may have.

2 Q. Do you recall what happened when you might
3 have called her?

4 A. I'm not sure. I don't remember.

5 Q. Whether you got a voicemail or --

6 A. I don't remember.

7 Q. How did you learn she was out of town?

8 A. I believe when I arrived at City Hall later,
9 perhaps Kelly Ek or somebody at City Hall told me she
10 was out of town.

11 Q. Are you just guessing about that or do you
12 specifically remember?

13 A. Someone told me, I don't know who it was.

14 That was a day that City Hall was closed, but I know
15 Kelly Ek was there at City Hall that day to assist with
16 the noticing of the meeting.

17 Q. Were there any other employees present on --
18 are you talking about the 10th?

19 A. The 10th. Yes, I guess they were open that
20 day. Yeah, they were open. So I'm thinking that -- I'm
21 confused, because it was the next day that it was
22 closed. So she was there. Yes, there probably were
23 other employees there too.

24 Q. At any time during your term as a city council
25 member did you and Joan Lamb have a disagreement about

Page 170

1 the materials?
2 A. I'm not sure. I don't remember.
3 Q. You've got Idaho Code 50-204 and your notes
4 state --
5 A. The first one is some minutes of May 15th,
6 2008 I believe where we approved the appointment of her
7 as the city administrator. I'm sorry, I didn't mean to
8 interrupt you.
9 Q. That's okay. Then you have got a copy of
10 Idaho Code 50-204 and a notation that says: "City
11 administrator not designated by resolution or
12 ordinance."
13 A. And I believe in the copy I had the line "and
14 such other officers as designated by the council" was
15 highlighted.
16 Q. Were you trying to determine the proper
17 procedure for terminating her employment by looking
18 at --
19 A. I think that might have been why that was
20 there.
21 Q. You've got the May 15, 2008 meeting minutes
22 that says she's an appointed officer, then you are
23 looking at the statute that tells you how to deal with
24 appointed officers; right?
25 A. Right.

Page 171

1 Q. And then you have a copy of Ms. Hammer's
2 contract?
3 A. That is correct.
4 Q. So since this wasn't copied in color there may
5 be some highlighting on the contract as well?
6 A. I don't recall that.
7 Q. What was the purpose of having a copy of
8 Ms. Hammer's contract?
9 A. I suspect to discuss the terms of the
10 contract.
11 Q. Was there any discussion about terminating
12 Ms. Hammer with cause?
13 A. Not that I recall.
14 Q. I realize that Mayor Briscoe did not elaborate
15 with you the on the phone when he spoke to you on either
16 the 18th or the 19th about why he couldn't work with Ms.
17 Hammer. But do you recall whether he elaborated on his
18 inability to work with Ms. Hammer during the January
19 19th, 2012 executive session?
20 A. I believe he gave a few reasons.
21 Q. What do you recall?
22 A. From what I recall, and I didn't write down
23 any notes or any reasons, but to the best of my
24 recollection, it related to the fact that he had
25 experiences with her from when he became mayor up until

Page 172

1 that time and determined that it was hard for him to
2 work with her and that he wanted to choose his own city
3 administrator, and that his management style was
4 different than the management style that the previous
5 administration had operated under, and that he wanted to
6 have a city administrator that would work under his
7 management style. Those were the three reasons that I
8 recollect.
9 Q. Did any of the council members ask him to
10 elaborate on any of the reasons why he was wanting to
11 terminate Ms. Hammer's employment?
12 A. Not that I recollect.
13 Q. Why did you personally vote to support the
14 termination of Ms. Hammer's employment?
15 A. Because that is what the mayor wanted.
16 Q. Do you know if Mr. Naylor was present by phone
17 for the entire January 19th meeting?
18 A. To the best of my knowledge, yes.
19 Q. And Adam King was present for the entire
20 meeting?
21 A. To the best of my knowledge.
22 Q. Do you recall taking any precautions when
23 turning over the Patty Ball report to the Blaine County
24 Prosecutor to ensure that it wouldn't become a public
25 document?

Page 173

1 MR. NAYLOR: Object to the form; foundation.
2 THE WITNESS: That was not my obligation. I
3 had nothing to do with that.
4 Q. (BY MR. SWARTZ) Did you ever disclose the
5 Patty Ball report in any manner into the public forum?
6 A. Which Patty Ball report?
7 Q. Any of them.
8 A. I disclosed one line of the Patty Ball report
9 regarding me publicly, yes.
10 Q. Anything else?
11 A. No.
12 Q. Now, throughout your term as a city council
13 member you maintained a blog online; correct?
14 A. Yes.
15 Q. And you commented numerous times on your blog
16 regarding Sharon Hammer; isn't that correct?
17 A. I would not call it commenting. I posted blog
18 posts that included copies of press releases or links to
19 stories with introductions explaining what it was in
20 most cases.
21 Q. Why were you doing that?
22 A. To inform the citizens about what was going
23 on.
24 Q. At any point in time did anyone ask you to
25 stop posting on your blog regarding Ms. Hammer?

Page 182

ERRATA SHEET FOR NILS A. RIBI

1
2 Page ____ Line ____ Reason for Change ____
3 Reads ____
4 Should Read ____
5
6 Page ____ Line ____ Reason for Change ____
7 Reads ____
8 Should Read ____
9
10 Page ____ Line ____ Reason for Change ____
11 Reads ____
12 Should Read ____
13
14 Page ____ Line ____ Reason for Change ____
15 Reads ____
16 Should Read ____
17
18 Page ____ Line ____ Reason for Change ____
19 Reads ____
20 Should Read ____
21
22 Page ____ Line ____ Reason for Change ____
23 Reads ____
24 Should Read ____
25 You may use another sheet if you need more room.
26 WITNESS SIGNATURE ____

Page 183

REPORTER'S CERTIFICATE

1
2 I, BEVERLY BENJAMIN CSR No. 710, Certified
3 Shorthand Reporter, certify: That the foregoing
4 proceedings were taken before me at the time and place
5 therein set forth, at which time the witness was put
6 under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 10th day of June 2014.
17
18
19
20
21 BEVERLY A. BENJAMIN, CSR No. 710
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 28, 2019

ORIGINAL

CERTIFICATE OF NILS A. RIBI

I, NILS A. RIBI, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition;
that I have read said deposition and know the contents thereof;
that the questions contained therein were propounded to me; and
that the answers therein contained are true and correct, except
for any changes that I may have listed on the Change Sheet
attached hereto.

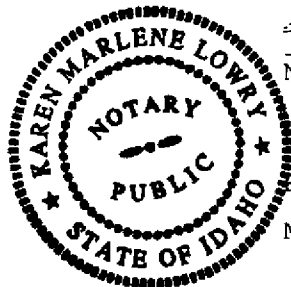
DATED this 13 day of July, 2014.

CHANGES ON ERRATA SHEET YES X NO


NILS A. RIBI

SUBSCRIBED AND SWORN to before me this 14th day of

July, 2014.



Karen Marlene Lowry
NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR Idaho

RESIDING AT Bellevue

MY COMMISSION EXPIRES 8.12.16

36699B4 (Due July 13, 2014)

ORIGINAL

CHANGE SHEET FOR NILS A. RIBI

PAGE 81 LINE 24 REASON FOR CHANGE The word "to" is misspelled.

READS "to"

SHOULD READ "two"

PAGE 165 LINE 11 REASON FOR CHANGE I have never had a suit against "Ms. Hammer"

READS "Ms. Hammer, Mr. Donoval that was filed on..."

SHOULD READ "Mr. Donoval that was filed on..."

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

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PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

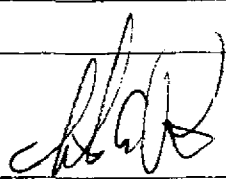
READS _____

SHOULD READ _____

PAGE _____ LINE _____ REASON FOR CHANGE _____

READS _____

SHOULD READ _____

DEPONENT SIGNATURE:  _____

36699B4 (Due July 13, 2014)

208/345-9611

M&M COURT REPORTING SERVICE

208/345-8800 (fax)

EXHIBIT E 895

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL,)
Plaintiff,)
vs.) Civil Action No.
CITY OF SUN VALLEY; NILS RIBI; and) 1:13-CV-211-EJL
DEWAYNE BRISCOE,)
Defendant.)
_____)

DEPOSITION OF MICHELLE D. FROSTENSON

APRIL 23, 2014

REPORTED BY:

JAHNENE ADMIRE, CSR No. 760,

Notary Public

Page 14

1 A. We held an executive session on November 11th.
2 Q. What happened in that executive session --
3 November 11th of 2011 --
4 A. That is correct.
5 Q. -- what happened in that executive session?
6 A. I shared my concerns with the council.
7 Q. Who was present?
8 A. Adam King, Mayor Wayne Willich, Councilman
9 Nils Ribi, Councilman Bob Youngman, Councilman Dewayne
10 Briscoe, and myself.
11 Q. And what were the concerns that you shared
12 with these individuals on November 11th?
13 A. I shared with them concern about personal use
14 of a city vehicle by Sharon Hammer. I shared concern
15 about the use of a city credit card to purchase fuel for
16 personal use of a city vehicle by Sharon Hammer. I
17 shared concern about lack of reporting of vacation over
18 three years by Sharon Hammer. That's all I can clearly
19 remember. I believe there were other topics that we
20 talked about, but that's what I clearly remember
21 discussing.
22 Q. Were your concerns related solely to Sharon
23 Hammer, or did they involve any other employees or
24 contractors of the City of Sun Valley?
25 A. I specifically went to the council concerning

Page 16

1 led to the calling of this executive session?
2 A. Nils Ribi.
3 Q. When did you speak with Mr. Ribi?
4 A. I believe it was on the 10th, but it may have
5 been on the 9th. I'm pretty sure it was the 10th. I
6 didn't go up to the city on Wednesdays, usually.
7 Q. Did you speak to anyone other than Mr. Ribi
8 about your concerns?
9 MR. NAYLOR: Object to the form. Foundation.
10 THE WITNESS: Yes.
11 Q. (BY MR. SWARTZ) Who?
12 A. Mayor Willich.
13 Q. When?
14 A. October 5th, 2011.
15 Q. Did you speak to anyone other than Mr. Ribi
16 and Mayor Willich about your concerns prior to the
17 November 11th executive session?
18 A. Yes.
19 Q. Who?
20 A. Several people.
21 Q. Who?
22 A. Kelly Eck.
23 Q. When?
24 A. I can't answer that question. Diane Shay. I
25 sought professional advice from an individual outside of

Page 15

1 Sharon Hammer.
2 Q. Was there executive session already scheduled
3 for you to share your concerns, or did you request that
4 an executive session be set up so that you could share
5 your concerns?
6 MR. NAYLOR: Object to the form. Compound.
7 THE WITNESS: Twenty-four hours' notice was
8 given that there would be an executive council meeting.
9 Q. (BY MR. SWARTZ) Who gave the notice?
10 A. I don't know. Would you rephrase the second
11 part of the question? I don't remember it.
12 Q. Yeah. Who gave the notice that this
13 November 11th, 2011, executive session was going to be
14 called?
15 A. I -- I assume it was the city clerk, but I
16 really don't remember.
17 Q. This was a special executive session; this
18 wasn't a regularly scheduled executive session? Is that
19 right?
20 A. We don't have regularly scheduled executive
21 sessions. They're all special.
22 Q. Do you know what occurred that gave rise to
23 the need to call this executive session?
24 A. Yes. My concern.
25 Q. Who did you speak to about your concerns that

Page 17

1 city hall. I don't recall his name at this time, but
2 it's in the records. He was an HR specialist who was
3 associated with Starley-Leavitt.
4 Q. Starley-Leavitt?
5 A. Leavitt. They were our benefits
6 administrators for city, City of Sun Valley.
7 Q. And you spoke to this HR specialist about your
8 concerns concerning Ms. Hammer?
9 A. I spoke to him about my concerns about misuse
10 of city property. I asked his advice on how I should
11 handle a situation professionally and legally, yes.
12 Q. And it was related only to Sharon Hammer?
13 A. I'm not sure I even told him who it was. It
14 was a long time ago.
15 Q. When you spoke to Diane Shay, do you recall
16 when that was?
17 A. I don't.
18 Q. Was it specific to Sharon Hammer?
19 A. Yes.
20 Q. Was it before or after you spoke with Mayor
21 Willich?
22 A. I don't remember.
23 Q. What did -- what position did Diane Shay hold?
24 A. Colleague.
25 Q. That was her title, "colleague"?

Page 22

1 you ask Diane Shay how she knew that Sharon Hammer
2 didn't report these golfing trips?
3 A. She asked me if Sharon reported them.
4 Q. And what did you do in response to that
5 question?
6 A. I told her no.
7 Q. So you reviewed Sharon -- at the time you were
8 employed at the City of Sun Valley you reviewed Sharon
9 Hammer's timecards?
10 MR. NAYLOR: Object to the form.
11 THE WITNESS: Sharon Hammer didn't fill out
12 timecards.
13 Q. (BY MR. SWARTZ) What did you review in order
14 to tell Diane Shay that Ms. Hammer did not report this
15 golfing outing?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: There was nothing to review. If
18 she took time off, she emailed me and told me to deduct
19 her hours.
20 Q. (BY MR. SWARTZ) So she would contact you;
21 Sharon Hammer's point of contact was you when it came to
22 reporting paid time off?
23 A. I can't answer that question other than to
24 tell you that she would report her time off through
25 email to me so that I would know to deduct it from her.

Page 23

1 Q. Did she report it to anyone else other than
2 yourself?
3 MR. NAYLOR: Object to the form.
4 THE WITNESS: I can't answer that question.
5 Q. (BY MR. SWARTZ) Because you don't know?
6 A. I don't know.
7 Q. It could be that she reported her time to
8 someone other than yourself?
9 MR. NAYLOR: Object to the form. Calls for
10 speculation.
11 THE WITNESS: Again, I don't know.
12 Q. (BY MR. SWARTZ) So what did you look at to
13 answer Diane Shay's question about whether Ms. Hammer
14 reported time off related to these golf outings?
15 MR. NAYLOR: Object to the form.
16 THE WITNESS: It's a pretty simple question to
17 answer. Sharon Hammer hadn't reported hardly any time
18 off during the time she worked at the city unless she
19 was gone for long periods of time.
20 Q. (BY MR. SWARTZ) Did you look at anything
21 before you answered Diane Shay's question?
22 A. I can't answer that.
23 MR. NAYLOR: Just for clarification, why can't
24 you answer that?
25 THE WITNESS: I don't remember.

Page 24

1 MR. NAYLOR: Okay. I mean, you're not being
2 instructed not to answer --
3 THE WITNESS: Right.
4 MR. NAYLOR: -- is what I want the record to
5 reflect.
6 Q. (BY MR. SWARTZ) Tell me about your
7 communications with Kelly Eck regarding your concerns
8 about Sharon Hammer.
9 A. Kelly came to me repeatedly over an extended
10 period of time with concerns about how often Sharon was
11 gone and how she couldn't possibly have that much
12 vacation available to be gone that often.
13 Q. And what did you do in response to Kelly Eck
14 coming to you and her sharing her concerns?
15 A. Often I would just shrug my shoulders. This
16 took place over an extended period of time. It wasn't
17 one incident.
18 Q. An extended period of time where Kelly Eck
19 would come to you and share her concerns?
20 A. Yes.
21 Q. And you would just shrug your shoulders?
22 A. On several occasions I did. It put me in a
23 rather awkward position.
24 Q. Why?
25 A. Well, I didn't feel like it was -- I felt like

Page 25

1 she should be going to the mayor.
2 Q. Did you tell her that?
3 A. I did tell her that a few times. Not every
4 time.
5 Q. Do you know if she ever did?
6 A. I don't.
7 Q. When you told Diane Shay that she should take
8 her concerns to the mayor, do you know if she ever did?
9 MR. NAYLOR: Objection; asked and answered.
10 THE WITNESS: I don't know.
11 Q. (BY MR. SWARTZ) When you received these
12 concerns from your co-workers, did you take them to the
13 mayor?
14 A. On October 5th of 2011.
15 Q. When you shared your concerns about the
16 vehicle, the credit card, and vacation?
17 A. Yes.
18 Q. When you went to the mayor on October 5th of
19 2011, did you have any written materials to substantiate
20 your concerns?
21 A. I did.
22 Q. What did you have?
23 A. I had put together a list of time away from
24 the office that I could substantiate through email that
25 wasn't reported as vacation. I put together a

Page 38

1 which made be laugh.

2 Q. Why?

3 A. Because that didn't matter to me. I'd gone to
4 him about Sharon Hammer. And I told him at that point,
5 I said, "What you do with this information is your
6 business. It was my job to tell you."

7 Q. Did you raise concerns about Sharon Hammer on
8 this follow-up meeting with --

9 A. No.

10 Q. -- Mayor Willich?

11 Why?

12 A. I had done my job. And that's exactly what I
13 just told you. I knew he was fishing, that he -- I knew
14 he wasn't going to do anything at that point. It was
15 three weeks later, and it was like he was just trying to
16 pacify me. And that's why I said that I didn't care
17 what he did with the information, that I had done my job
18 in informing him.

19 Q. Did you ask about your concerns that you had
20 expressed to Mayor Willich at this follow-up meeting?

21 A. No.

22 Q. And you just laughed at him when he told you
23 about his follow-up on Mal Pryor?

24 A. I did not laugh at him. I was actually very
25 serious.

Page 39

1 Q. I'm sorry. I misunderstood your testimony. I
2 thought you said that when he told you that, you
3 laughed.

4 A. I didn't laugh at him; I laughed inside. I
5 apologize. I wasn't clear.

6 Q. Any other follow-ups with Mayor Willich after
7 that October 5 meeting and then the meeting that took
8 place three weeks later?

9 A. I don't believe so.

10 Q. The packet of materials that you had prepared
11 for your October 5 meeting with Mayor Willich, did
12 anyone ask you to prepare that packet?

13 A. No.

14 Q. Prior to preparing -- prior to your meeting
15 with Mayor Willich, had you raised your concerns about
16 Sharon Hammer with anyone other than Kelly Eck, Diane
17 Shay, or this HR specialist?

18 A. I don't remember.

19 Q. When did you prepare the packet of material
20 that you presented to Mayor Willich?

21 A. Shortly before I met with him, probably the
22 day before. I don't think it was -- I think I called
23 him from home and asked him if I could meet with him.
24 And then the next day I met with him. I'm not
25 completely confident of that, but I believe that's how

Page 40

1 it went.

2 Q. Did you leave the packet of materials with
3 Mayor Willich?

4 A. No.

5 Q. What did you do with it?

6 A. I kept them in a folder.

7 Q. At home or at City of Sun Valley?

8 A. I don't recall.

9 Q. You don't recall where the folder was?

10 A. No.

11 Q. Did you provide that packet to anyone else?

12 MR. NAYLOR: Object to the form. When?

13 MR. SWARTZ: Ever.

14 THE WITNESS: Some format of that packet was
15 presented at a later date. I had done a lot of research
16 on vacation, matching up emails with vacation taken and
17 time reported off, so, yes.

18 Q. (BY MR. SWARTZ) Who was it presented to?

19 A. Over the period of six months, many people. I
20 can't even answer that question, I mean, with any form
21 of accuracy. It was -- I believe Patti Ball. I believe
22 I gave a copy of it to Scott Birch. I do not recall
23 whether each council member got a copy of it -- oh, I do
24 recall I was asked to prepare the information for a --
25 for an executive council meeting, so I prepared seven

Page 41

1 packets of the information.

2 Q. Was that for the November 11th --

3 A. No.

4 Q. -- 2011 meeting?

5 A. No.

6 Q. Do you recall what meeting that was for?

7 A. I don't.

8 Q. Did you take any materials with you to the
9 November 11, 2011, executive session?

10 MR. NAYLOR: Object to the form. Asked and
11 answered.

12 THE WITNESS: Yes.

13 Q. (BY MR. SWARTZ) What materials did you bring
14 with you?

15 A. I brought a spreadsheet, a fuel -- credit card
16 charges with me. I brought some format of vacation time
17 taken off. I believe that was . . .

18 Q. Was that the same packet you tried to provide
19 to Mayor Willich on your October 5 meeting?

20 A. I believe I had done more research during that
21 time, between October 5th and November 11th. So there
22 was more to it.

23 Q. Why were you doing more research?

24 A. I believe I spent a great deal of time between
25 the time I talked to Nils Ribi and the time I met for

Page 42

1 the executive council meeting putting that information
2 together.
3 Q. When did you speak with Mr. Ribi?
4 A. I don't recall if it was Wednesday the 9th or
5 Thursday the 10th.
6 Q. After you met with Mayor Willich on October 5
7 and then your three-week meeting with him afterward,
8 following that meeting, is that when you spoke with Nils
9 Ribi?
10 MR. NAYLOR: Object to the form.
11 THE WITNESS: I spoke with Nils Ribi on either
12 the 9th of November or the 10th of November.
13 Q. (BY MR. SWARTZ) Was that the first time that
14 you spoke with Mr. Ribi about your concerns about Ms.
15 Hammer?
16 A. Yes.
17 Q. Did he come to you or did you go to him? I
18 don't know if Mr. Naylor's got the answer to that
19 question or not, but if you guys need to go chat, you're
20 welcome to.
21 A. No. There's just more to it.
22 Q. Well, now's the time. Let's hear it.
23 A. I called Nils Ribi -- I don't know if I called
24 him or texted him -- I was on the way up to the city, so
25 it must have been on Thursday, the first time I tried to

Page 43

1 contact him, because I always worked on Tuesdays and
2 Thursdays. So it must have been Thursday that I
3 contacted him. I was on the way up to the city, and I
4 believe I tried to call him, and he didn't answer his
5 phone. So I believe I tried texting him when I got to
6 work. And then I tried to call him again, and he called
7 me back. And then I met with him right after that.
8 Q. Why were you reaching out to Nils Ribi?
9 A. I had received an email from Sharon Hammer, I
10 believe it was Tuesday evening of that week, that said
11 we need to discuss inventory. And so I talked with her
12 the next day, which was Wednesday, over the phone. And
13 she told me that she had known for a while that
14 inventory was walking away, but now something
15 substantial had walked, and we needed to do something
16 about it.
17 And that precipitated a call to the auditors,
18 who were coming the next week to do an audit on the
19 city. On my way up to the city that Thursday morning, I
20 called Jodi Daugherty, and I told her about the
21 conversation. And she told me -- she says, "That's a
22 significant deficiency, and it will be reported in the
23 audit."
24 That's like getting an "F" on your audit. And
25 we talked for quite a while. She asked me a couple of

Page 44

1 questions. I provided information for her. She told me
2 that -- this isn't verbatim because it's been a long
3 time -- but, basically, she said I had two choices: I
4 either had to disclose what I knew or I needed to
5 resign. I told her I couldn't afford to resign and that
6 I felt like the right thing to do would be to disclose
7 it.
8 And so I immediately got off the phone with
9 her and tried to call Nils. And that's how it
10 precipitated my conversation with Nils.
11 Q. You got an email from Sharon saying you needed
12 to discuss inventory. She tells you that something
13 substantial has walked out of the building. What was
14 that substantial thing that went missing?
15 A. I don't know.
16 Q. You didn't ask?
17 A. I did not ask.
18 Q. And then you call the auditor and say Sharon
19 Hammer has told me that something substantial has gone
20 missing, and the auditor tells you, well, you need to
21 disclose what you know or you need to resign?
22 A. Oh, I told her everything at that point, that
23 I had a conversation with the mayor.
24 Q. What went missing?
25 MR. NAYLOR: Let her finish.

Page 45

1 MR. SWARTZ: That's what I'm asking, is what
2 went missing.
3 MR. NAYLOR: No. That's not the pending
4 question she was answering.
5 MR. SWARTZ: That was the question.
6 Q. (BY MR. SWARTZ) What went missing? What was
7 the thing that you told the auditor that Sharon Hammer
8 told you went missing?
9 A. I don't know.
10 Q. How did you describe what went missing to the
11 auditor?
12 A. I didn't. I told her about the conversation
13 that I had with Sharon.
14 Q. Where Sharon told you that something went
15 missing?
16 A. Yes.
17 Q. And the auditor says, all right, so here are
18 your options: You either need to go disclose this
19 unidentified thing that went missing or you need to
20 resign?
21 MR. NAYLOR: Object to the form. Misstates
22 her testimony.
23 THE WITNESS: Yes, that is not what I said. I
24 -- we had been told the year before -- I probably am not
25 going to get this terminology correct -- but after an

Page 46

1 audit is complete, they have -- they have a list of
2 findings that they present to management. And during
3 the following year, you are to address those findings.
4 You actually is have to tell them how you're going to
5 address them. You have to respond to the audit
6 findings.

7 And one of those findings was that we needed
8 to set up an inventory system. So when I shared this
9 information with Ms. Daugherty, it precipitated this
10 response from her. I also shared with her the other
11 issues that I had gone to the mayor about. And that
12 whole conversation ended up in her suggestion to me.

13 Q. (BY MR. SWARTZ) That you should contact Nils
14 Ribi?

15 A. No.

16 Q. Why did -- why did you contact Nils Ribi?

17 A. Because I needed to tell the council. That
18 was the next step. I needed to disclose to the council
19 the information that I had.

20 Q. Did you reach out to any other council member
21 other than Mr. Ribi?

22 A. No.

23 Q. Why?

24 A. John Lamb was on vacation. I had already
25 talked to Mayor Willich. I didn't even know Dewayne

Page 47

1 Briscoe. I hadn't had more than ten words'
2 communication with him in the entire time he'd been on
3 the council, and pretty much the same with Bob Youngman.
4 I had years of working with Nils Ribi. He'd been there
5 almost as long as I had. And I trusted him.

6 Q. And so when you contacted Nils Ribi, did you
7 share with him at that time your concerns, or did you
8 just tell him generally I have concerns, and he decided
9 to set up the executive session?

10 A. When he returned my phone call at city hall, I
11 said, "I have something I need to talk to you about
12 immediately."

13 And he said, "Okay."

14 And I said, "And I don't want to do it at city
15 hall."

16 And he said, "Okay. Well, where do you want
17 to meet me?"

18 And I said, "I don't know, somewhere,
19 somewhere away from city hall. How about Sun Valley
20 Company?"

21 And so we met at Sun Valley Company. And I
22 shared very little with him because I had no proof with
23 me. I just said, "This is what -- these are my
24 concerns, and I don't know what to do with them, but
25 I've got this situation with the auditors. They're

Page 48

1 going to be here next week, and I have to do my part or
2 I'm going to find myself in a very precarious
3 situation."

4 He said "Okay, let me call" -- I believe he
5 said he was going to call Bob Youngman. And that was
6 the end of the conversation. I went back to city hall.
7 And I don't know who told me, but I believe Nils called
8 me back, and told me that they were going to have an
9 executive meeting the next day, and it was going to be
10 later in the afternoon because they had to give
11 24 hours' notice.

12 Q. Did he tell you that he wanted you to join the
13 meeting?

14 A. Yes.

15 Q. Did he ask you to bring anything with you?

16 A. I don't remember. I don't remember if he did
17 or not.

18 Q. So you didn't share any details about your
19 concerns with him, but you said there's an audit next
20 week and this inventory issue has come up, and I'm going
21 to be on the hook for it?

22 A. I -- I did tell him enough to make sure he
23 understood the importance of this. I did -- I don't
24 remember exactly what I said to him, but I shared with
25 him I had a meeting with the mayor on October 5th, and I

Page 49

1 brought these things up to him, and then I had this
2 email from Sharon and this conversation, and I just
3 talked to the auditors. And I told him, I said, "We
4 need to do something immediately."

5 Q. And the concern with the audit was this lack
6 of inventory control?

7 A. I don't know what I can tell you that I know
8 now. I know a lot more now about it than I did then.
9 But I believe my understanding then was that I could be
10 held personally liable if I didn't disclose, because of
11 state statute, what I knew. And it needed -- the timing
12 of it was critical that it happen before the auditors
13 arrive the next week.

14 Q. So as I'm understanding it -- you correct me
15 if I'm wrong -- but we essentially have four concerns
16 that you brought to Nils Ribi: One was this inventory
17 control and the impending audit, and then the other
18 three things related solely to Sharon Hammer, and that
19 was the vehicle, credit card, and reporting of vacation;
20 is that correct?

21 A. I don't remember exactly the conversation I
22 had with him. I believe I shared all of those concerns
23 with him. It was quick. It didn't last very long. It
24 was just five minutes and over.

25 Q. And then from the time that you had that very

Page 50

1 quick meeting with Mr. Ribí and the November 11 meeting,
2 you said you did a bunch of research between those two
3 periods of time; right?
4 A. I put together -- I put together something
5 that I could hand out to the council, because I felt
6 like -- I was pretty scared. I mean, I could have lost
7 my job over just what I was doing. It was not an easy
8 thing for me to do. So I wanted to make sure that I had
9 documentation to back up what I was saying. I didn't --
10 so it -- this was not an easy thing for me to do.
11 Q. What was your job with the City of Sun Valley?
12 A. I was the treasurer.
13 Q. That's an appointed position; is that correct?
14 A. That is correct.
15 Q. Who appointed you?
16 A. I believe it was the mayor and council.
17 Q. Who had the ability to terminate your
18 position?
19 A. I -- you know, I'm not a legal expert. I
20 don't know.
21 Q. As an appointed employee, did you know that
22 only the mayor, with the approval of the city council,
23 could remove you from your position?
24 MR. NAYLOR: Object to the form. Calls for
25 legal conclusion, misstates the law.

Page 51

1 THE WITNESS: At some point during that
2 process I'd done my homework and asked some questions,
3 and I did find that out.
4 Q. (BY MR. SWARTZ) You say "at some point." Can
5 you give me a --
6 A. No.
7 Q. -- reference?
8 A. No.
9 Q. At some point did you become concerned about
10 losing your job?
11 A. Oh, I was concerned about losing my job on
12 October 5th when I went to the mayor.
13 Q. And then was it that concern that led you to
14 do your research into how you could lose your job?
15 A. I don't believe so.
16 Q. What led you to figure out, ask questions to
17 figure out how you could lose your job?
18 A. I don't know. We're talking -- an enormous
19 amount of things went on during that nine months that
20 made me very uncomfortable. It could have been anytime
21 during that nine months that I did the research.
22 Q. From nine months -- help me out with the
23 period of time. What nine months?
24 A. Well, from the time I went to the mayor until
25 the time I quit working for the city. I can't tell you

Page 52

1 exactly when I acknowledged that information or sought
2 legal counsel, and that.
3 Q. Did anyone ever tell you that your job would
4 be protected?
5 MR. NAYLOR: Object to the form.
6 THE WITNESS: Yes.
7 Q. (BY MR. SWARTZ) Who told you that?
8 A. Patti Ball.
9 Q. Anyone else?
10 A. I don't know. It would have been satisfying
11 enough to hear it from Patti Ball, but I wouldn't
12 remember if anyone had.
13 Q. Patti Ball told you your job would be
14 protected?
15 A. She didn't say it exactly like that.
16 Q. Well, how did she say it?
17 A. She stated -- this is not verbatim -- but she
18 implied to me that as a whistleblower I had certain
19 protections under the law; and that if I found myself in
20 any compromising position where I felt like my job was
21 in danger, that I should contact her at that point when
22 we were in the investigation.
23 Q. Did you ever have a need to contact Patti Ball
24 and share that your employment was in danger?
25 A. I had a need, but I never contacted her.

Page 53

1 Q. Did you contact anyone about your belief that
2 your job was in danger?
3 A. Yeah. Kirt Naylor.
4 Q. Anyone else?
5 A. I'm not sure I understand the question.
6 Q. Did you contact anyone else?
7 A. I talked to my husband about it on a daily
8 basis.
9 Q. Anyone else?
10 A. I suspect I talked to friends about it.
11 Q. Anyone else?
12 A. I don't know. And we're talking three years
13 ago. I don't know.
14 Q. When you met with Mr. Ribí on November 9th,
15 did you share with him what transpired during your
16 October 5 meeting with Mayor Willich?
17 MR. NAYLOR: Object to the form. Asked and
18 answered.
19 THE WITNESS: I believe I did tell him I had a
20 meeting with Mayor Willich, and that I had discussed
21 this with him, and that he hadn't done anything with the
22 information I'd given him.
23 Q. (BY MR. SWARTZ) What did you do to confirm
24 your statement to Mr. Ribí that Mayor Willich hadn't
25 done anything to address your concerns?

Page 54

1 A. I think my exact words to Nils Ribi were: The
2 only noticeable change is that the City of Sun Valley
3 decals are missing off of her city vehicle.
4 Q. Did you ask Mayor Willich whether he followed
5 up on your concerns?
6 A. He'd already told me that -- that he was in
7 the process of discussing Mal Pryor's situation or
8 addressing Mal Pryor's situation. It had only been a
9 couple days before that that he told me that.
10 Q. And so you went to Nils Ribi, and you said
11 "The mayor's not addressing my concerns that I brought
12 to him"?
13 A. What I said to Nils Ribi, if I remember
14 correctly, is that the only apparent change is that
15 there are no city decals on her vehicle anymore.
16 Q. Did you do anything to confirm whether Mayor
17 Willich was following up on your concerns before you
18 told Nils Ribi that you believed Mayor Willich was not
19 following up on your concerns?
20 MR. NAYLOR: Object to the form.
21 THE WITNESS: I believe I answered that
22 already.
23 Q. (BY MR. SWARTZ) Is that a no, you didn't do
24 anything to confirm whether Mayor Willich was following
25 up on your concerns?

Page 55

1 A. I had talked to the mayor a few days before
2 that. The mayor had brought me into his office and told
3 me what he was doing. So there was no need to confirm
4 anything because he had already told me.
5 Q. He told you, "I'm following up with Mal
6 Pryor"?
7 A. Yes.
8 Q. And you didn't ask anything about your
9 concerns regarding Sharon Hammer?
10 A. What I said to him was, "I don't really care
11 what you do with this. I did my part. I told you about
12 it."
13 Because at that point I recognized he wasn't
14 going to do anything. At least in my opinion, it looked
15 like he wasn't going to do anything, because her city
16 vehicle had no decals on it anymore. It wasn't
17 identifiable as a city vehicle anymore; they had been
18 removed.
19 Q. Why were you so intent on having someone
20 address your concerns about Sharon Hammer?
21 MR. NAYLOR: Object to the form.
22 THE WITNESS: The policy strictly stated at no
23 time shall any employee drive a city vehicle for
24 personal use. It was my responsibility to make sure
25 that policies were followed in relation to the financial

Page 56

1 end of the city, as an appointed treasurer. I could be
2 held personally liable.
3 Q. (BY MR. SWARTZ) In fact, part of your job was
4 to stand in front of the city council under oath and to
5 verify expenditures made by the city; right?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: I was not aware of that during
8 the time of my appointment with the city. I do not
9 believe that ever happened at city hall in all the years
10 that they had been a city. I don't know that for sure.
11 But I went back and looked in council packets, and I had
12 not seen any documentation of that. Had I known that
13 that was the legal responsibility, it would have been
14 happening. I did not know.
15 Q. (BY MR. SWARTZ) As the treasurer for the City
16 of Sun Valley, did you do anything to confirm
17 expenditures that were made by the city?
18 MR. NAYLOR: Object to the form.
19 THE WITNESS: Would you repeat that question,
20 please?
21 Q. (BY MR. SWARTZ) Sure. As the treasurer for
22 the City of Sun Valley, was it part of your job to
23 confirm expenditures that were made with city money?
24 MR. NAYLOR: Object to the form.
25 THE WITNESS: I believe had I known someone

Page 57

1 was fraudulently misusing city funds, it would have been
2 my job to make sure that I reported that. And I did
3 have my suspicions at times, and I did report them.
4 Q. (BY MR. SWARTZ) On October 5th?
5 A. No prior to that. I had sent emails to Sharon
6 Hammer about the credit card use in the fire department.
7 Q. What about Sharon Hammer's use of the city
8 vehicle prior to October of 2011? Did you raise that to
9 anyone?
10 A. To her on many occasions.
11 Q. Anyone else?
12 A. Not anyone in a position of authority.
13 MR. NAYLOR: How are you doing, Jahneene? It's
14 been an hour and a half. Need a break?
15 MR. SWARTZ: Yeah, let's take a break.
16 (Recess was held.)
17 MR. SWARTZ: Back on.
18 Q. (BY MR. SWARTZ) Ms. Frostenson, when did your
19 employment as the treasurer for the City of Sun Valley
20 begin?
21 A. I don't recall. When I was hired, I was not
22 hired as the treasurer.
23 Q. Were you the treasurer before Ms. Hammer's
24 employment began?
25 A. I believe so.

REPORTER'S CERTIFICATE

1
2 I, JAHNENE ADMIRE, CSR No. 760, Certified
3 Shorthand Reporter, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth, at
6 which time the witness was put under oath by me;

7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;

10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this
16 29th day of April, 2014.

17

18

19

20



21 JAHNENE ADMIRE, CSR 760

22 Notary Public

23 P.O. Box 2636

24 Boise, Idaho 83701-2636

25 My commission expires May 04, 2018

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,) Case No. 1:13-cv-211-EJL
vs.)
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
)

MAY 28, 2014

Notary Public

Page 10

1 know, the mayor. I had not been sworn in.
2 And somewhere along the line, Bob Van Ort got
3 into some difficulty with some staff people, and he was
4 either fired or asked to resign. And that -- and I have
5 no knowledge about how that all came about, but he was
6 gone.

7 And with Mayor Thorson's help, we interviewed
8 a couple of potential interim city administrators, and
9 then we hired -- whose name just escaped me -- Jerry
10 Osterman, and he had some 35 years in city
11 administration and so forth. Terrific guy. Helped me
12 tremendously.

13 Then we went on a search for the, I'll say,
14 permanent city administrator, and we interviewed, I'm
15 going to say, five or six candidates, meetings with
16 council members, and so forth.

17 I proposed hiring Sharon Hammer as the city
18 administrator, and I think she was unanimously approved
19 and endorsed by the council. And she started in June of
20 '08. So Sharon Hammer was the city administrator from
21 June of '08 until later.

22 Q. Through the end of your term?

23 A. Through the end of my term.

24 Q. How would you gauge her performance as a city
25 administrator during that period of time?

Page 11

1 A. I thought she was outstanding in all respects.
2 Very enthusiastic. She took EMT training, became a paid
3 on call firefighter and was totally engaged in the city
4 and, you know, I think, served our city very, very,
5 remarkably.

6 I spent a lot of time with the Boeing Company
7 managing large groups of people, and she was one of the
8 best people I had worked with over 30-some-odd years.

9 Q. Did you ever come to know Sharon Hammer to
10 have engaged in any misconduct during your term as
11 mayor?

12 MR. NAYLOR: Object to the form.

13 THE WITNESS: Not that I know of, no.

14 Q. (BY MR. SWARTZ) At some point in time, did
15 Michelle Frostenson, the city treasurer, present
16 allegations to you about misconduct that she believed
17 Ms. Hammer to have engaged in?

18 A. Yes.

19 Q. Do you recall when that was?

20 A. You just asked me a little while ago about
21 reviewing dates, and I went back and reviewed the
22 October 5th meeting with Michelle Frostenson. I didn't
23 have it in my calendar as "Meet with Michelle
24 Frostenson," but it was October 5th of 2011.

25 Q. Do you recall where the meeting took place?

Page 12

1 A. Yeah, my office.

2 Q. And did Ms. Frostenson alert you to why she
3 was wanting to meet with you prior to the meeting?

4 A. No, she -- I had an open-office policy.

5 Anybody could wander into my office anytime they wanted
6 to. And she came in and she said, "Mayor, I have
7 something to discuss with you." I'm trying to say words
8 that are my impressions, and they may not be perfectly
9 accurate.

10 Q. Certainly.

11 A. But, you know, somebody says, "Oh, sure, come
12 on in." And she had the little stack of papers in her
13 hand. And she said, "I wanted to talk to you right now
14 while Sharon isn't in the office."

15 I said "Oh, okay." And she started with an
16 allegation that I thought was very serious, but not
17 about Sharon. The allegation was that she was very,
18 very much concerned about the audit that was coming up
19 in December, because we were going to be -- you know,
20 the books were closed at the end of the fiscal year, end
21 of September.

22 And she said, "I am really worried about the
23 audit report, because there's been improper vacation
24 accruals going on, and it looks like it's about
25 \$133,000."

Page 13

1 I said, "Whoa, didn't know anything about
2 that." And I said, "Oh." So the second thing that she
3 was very much concerned about was improper charging of
4 our firefighters to the State of Idaho and to BLM and
5 maybe the forest service when we went out on a wildfire
6 fighting assignment. And I said, "Oh."

7 Then in a kind of conspiratorial manner, she
8 said, "Now, as far as Sharon is concerned," and so she
9 had that -- you know, her concerns for her job first.
10 Yeah, \$133,000 mischarged, that's a big deal. That was
11 for the total staff. And then also cheating the State
12 of Idaho -- mischarging or cheating the State of Idaho
13 or the BLM, a federal agency, that's a big deal.

14 So I had those two things in my mind, like,
15 whoa, these are real revelations. And then she started
16 into the, I'll say, personal stuff of Sharon driving the
17 city vehicle, and I'm trying to remember what the other
18 thing was.

19 But I somewhat stopped listening at the city
20 vehicle thing, because that was a surplus police car
21 that was, basically, scrap value. And I was -- I had my
22 mind full of the 133,000 bucks. And then she went into
23 other personal things, like Sharon Hammer is chasing
24 around with Eric Evans, you know, the building
25 department guy.

Page 14

1 And so by that time, I was just listening, not
2 answering, not responding. I said, "Okay. Okay. I'll
3 have to look into this." And then she left.

4 Now, what kind of concerned me about this was,
5 say, okay, Michelle is putting together like a package
6 of allegations about Sharon Hammer. Like she was, you
7 know, putting this whole report together. And I
8 remember that she and Council Member Ribí, apparently,
9 had done one of these things before when they got
10 Virginia Egger, the city administrator, way back in '07,
11 removed.

12 And you say, "Well, what do you know about
13 that?" Well, soon after I was elected, Council Member
14 Ribí sat down with me, like in the spring of '08, and he
15 had a dossier of material that he showed to me on
16 Virginia Egger with some checks in there that were
17 improperly written.

18 And I said, "Oh." I says, "Well, that's why
19 she was" [sound effect]. They put the story together
20 that she had resigned and everything, but they gave her
21 six months' severance pay, and I thought, "Gee, that's
22 interesting. How do you resign and get severance pay?"

23 But I dismissed it then. I just, you know,
24 kind of forgot about it until this day when Michelle
25 Frostenson came to me, because then it triggered my

Page 16

1 A. Track vacation time?

2 Q. Well, so there's \$133,000 that Michelle
3 Frostenson is saying wasn't properly tracked.

4 A. Oh, yeah. Michelle. I mean, preparing the --
5 yeah, Michelle.

6 Q. So that was her job.

7 A. But let me clarify something about the
8 133,000. Later Tammi Hall, the part-time bookkeeper,
9 and I then looked into that 133,000. That was a totally
10 bogus number. When we cut through all of the vacation
11 time accruals that might have been improper -- first of
12 all, the police chief could accrue lots of time, the
13 fire chief can accrue lots of time.

14 There were only a handful of people, and I
15 believe not Sharon, that had accrued vacation time to
16 the tune of about \$13,000, not 133,000. And that's just
17 not a decimal point error. I mean, it was much lower.

18 And when you think about it, what she was
19 really doing -- let's assume for a moment that all 31
20 staff members all had a June 1st anniversary date. For
21 some odd reason they had all been hired in such a way
22 that on June 1st, they started their new year.

23 Well, you could postulate that -- is it May
24 31st -- on May 31st that there would be no vacation
25 accrual, because all of the staff people had taken their

Page 15

1 memory, "Hmm, wasn't" -- "weren't those checks supplied
2 to Council Member Ribí by the treasurer, Michelle?
3 Don't know."

4 But in any event, at that point, I'm thinking,
5 right away, something kind of smells here. It's just
6 not passing the smell test. You know, Michelle had all
7 of this time, and all of a sudden one month before the
8 election and da-da-da.

9 And I thought, well, the auditors don't arrive
10 until December, so we have some time to do our own
11 investigation, look into this, take care of it. Right
12 after the election, when all of that is out of the way,
13 and then we can get to work on it. That was my
14 attitude.

15 Q. In addition to the city vehicle, did Michelle
16 Frostenson raise concerns about Sharon Hammer using the
17 city funds to fuel the city vehicle for personal trips?

18 A. I don't recall that, no.

19 Q. Did she raise any concerns about Sharon not
20 reporting her time accurately?

21 A. I don't recall that. She buried the Sharon
22 Hammer improper vacation accrual into that \$133,000
23 story.

24 Q. During your term as mayor, whose job was it to
25 track vacation time?

Page 17

1 vacation during that year. On June 1st you'd have 31
2 people times so many hours. You could have 300 -- a
3 half a million dollars' worth of vacation accrual,
4 properly, because they all were assigned a new two weeks
5 or a new four weeks of vacation.

6 So what -- now, my impression was that
7 Michelle Frostenson purposely was trying to mislead,
8 especially the city council, in the report that she
9 made. She was cooking the books.

10 Q. How soon after the October 5th meeting did you
11 come to your conclusions about the lack of veracity
12 behind Ms. Frostenson's allegations?

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: About an hour and a half of
15 thinking. Because it's -- you've told me not to use
16 body language, but I'm going to have to describe body
17 language for you to show it. You could say, here's body
18 language one: "I'm very concerned about what's been
19 going on relative to Sharon Hammer's use of the car."
20 Okay? And for you to put this down, say it was very
21 relaxed. It was a simple straightforward conversation.

22 Now, I'm going to take a conspiratorial
23 approach, and I'm going to be up on the table like this
24 saying, "You know what, I have these things." You see.
25 And so body language does count, straight words don't.

Page 182

CHANGE SHEET FOR WAYNE WILlich

- 1
- 2 Page Line Reason for Change
- 3 Reads
- 4 Should Read
- 5 Page Line Reason for Change
- 6 Reads
- 7 Should Read
- 8 Page Line Reason for Change
- 9 Reads
- 10 Should Read
- 11 Page Line Reason for Change
- 12 Reads
- 13 Should Read
- 14 Page Line Reason for Change
- 15 Reads
- 16 Should Read
- 17 Page Line Reason for Change
- 18 Reads
- 19 Should Read
- 20 Page Line Reason for Change
- 21 Reads
- 22 Should Read
- 23 Page Line Reason for Change
- 24 Reads
- 25 Should Read
- 26 Use a separate sheet if you need more room.
- 27 WITNESS SIGNATURE

Page 183

REPORTER'S CERTIFICATE

- 1
- 2 I, ANDREA L. CHECK, CSR No. 748, Certified
- 3 Shorthand Reporter, certify;
- 4 That the foregoing proceedings were taken
- 5 before me at the time and place therein set forth, at
- 6 which time the witness was put under oath by me;
- 7 That the testimony and all objections made
- 8 were recorded stenographically by me and transcribed by
- 9 me or under my direction;
- 10 That the foregoing is a true and correct
- 11 record of all testimony given, to the best of my
- 12 ability;
- 13 I further certify that I am not a relative or
- 14 employee of any attorney or party, nor am I financially
- 15 interested in the action.
- 16 IN WITNESS WHEREOF, I set my hand and seal
- 17 this 6th day of June, 2014.
- 18
- 19 *Andrea Check*
- 20
- 21 ANDREA L. CHECK, C.S.R. No. 748, R.P.R.
- 22 Notary Public
- 23 P.O. Box 2636
- 24 Boise, Idaho 83701-2636
- 25 My Commission expires July 20, 2016.

TABLE OF CONTENTS

Declaration of Kirtlan G. Naylor CONT. <i>(NOTE: EXH A & B not filed in the District Court)</i>	11/18/2014	909
Plaintiff's Motion for Summary Judgment	11/18/2014	996
Memorandum in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	998
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1016
Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1031
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1042
Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1046

INDEX

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1046
Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1031
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1016
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	1042
Declaration of Kirtlan G. Naylor CONT. <i>(NOTE: EXH A & B not filed in the District Court)</i>	11/18/2014	909
Memorandum in Support of Plaintiff's Motion for Summary Judgment	11/18/2014	998
Plaintiff's Motion for Summary Judgment	11/18/2014	996

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF IDAHO
3
4 -----x Case No. 1:13-cv-211-EJL
5 SHARON R. HAMMER and JAMES R.
6 DONOVAL, husband and wife,
7
8 Plaintiffs,
9
10 vs.
11
12 CITY OF SUN VALLEY; NILS RIBI, in his
13 individual and official capacity, and
14 DeWAYNE BRISCOE, in his individual
15 and official capacity,
16
17 Defendants.
18 -----x
19
20 VIDEOTAPED DEPOSITION OF SHARON R. HAMMER
21 March 18, 2014
22
23 VOLUME I
24 Pages 1 - 198
25
26 Reported by
27 Brooke R. Bohr
28 CSR No. 753

Page 2

1 VIDEOTAPED DEPOSITION OF SHARON R.
2 HAMMER, taken at the instance of the Defendants,
3 at the law offices of NAYLOR & HALES, PC,
4 950 W. Bannock, Suite 610, in the City of Boise,
5 State of Idaho, commencing at 9:06 a.m., on
6 March 18, 2014, before Brooke R. Bohr, CSR, RPR, a
7 Notary Public in and for the State of Idaho,
8 pursuant to notice, and in accordance with the
9 applicable Rules of Civil Procedure.

APPEARANCES

13 FOR PLAINTIFFS
14 Eric B. Swartz
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16 1673 W. Shoreline Drive, Suite 200
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20 FOR DEFENDANTS
21 Kirtlan G. Naylor
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25 Boise, ID 83702
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Page 3

1 WITNESS
2
3 SHARON R. HAMMER Page:
4 Examination by Mr. Naylor 5
5 *****
6 EXHIBITS Page:
7
8 1 Notice of Taking Deposition 5
9 2 Amended Notice of Taking 6
10 Deposition
11 3 E-mail Chain 48
12 4 E-mail Chain 58
13 5 E-mail 66
14 6 E-mail 73
15 7 City of Sun Valley Letter 82
16 8 Verified Complaint 137
17 9 Resume 154
18 10 Use of City Vehicle Policy 167
19 11 Authorization for Release of 172
20 Personal Information
21 12 Charge of Discrimination 174
22 13 E-mail 179
23 14 E-mail Chain 180
24 15 City of Sun Valley Credit Card 182
25 Policy *****

Page 4

1 BOISE, IDAHO
2 March 18, 2014, 9:06 a.m.
3
4 THE VIDEOGRAPHER: On the record.
5 My name is Ron Attard. I'm the
6 videographer. I'm with John Glenn Hall Company,
7 whose business address is Post Office Box 2683,
8 Boise, Idaho.
9 This is the matter of Sharon Hammer and
10 James Donoval vs. City of Sun Valley, et al., in
11 the -- this deposition is being made on behalf of
12 the defendants. This is in the District Court --
13 United States District Court of the District of
14 Idaho for the District of Idaho.
15 Today's date is March 18th, 2014. The
16 time is approximately 9:05 a.m. The location of
17 the deposition is in the offices of Naylor &
18 Hales, 950 West Bannock in Boise, Idaho. The
19 deponent's name is Sharon Hammer.
20 Now other counsel will identify
21 themselves and then we'll swear in the witness.
22 MR. NAYLOR: Kirtlan Naylor for the
23 defendants.
24 MR. SWARTZ: Eric Swartz for the plaintiffs.
25

1 (Pages 1 to 4)

<p style="text-align: right;">Page 185</p> <p>1 total amount makes me uncomfortable because it 2 appears excessive. Has a policy on food purchases 3 ever existed or been discussed." 4 That's not documentation. That's an 5 actual purchase you were concerned about, right? 6 A. What's your question? 7 Q. You were concerned about the amount 8 of that purchase as being excessive, weren't 9 you? 10 A. That is what I've stated in the 11 E-mail. 12 Q. Now, were you familiar with -- 13 while you were the City administrator for the 14 City of Sun Valley, were you familiar with the 15 antiharassment guidelines of the personnel 16 manual? 17 A. I reviewed them while I was the City 18 administrator. 19 Q. Were you familiar with them while you 20 were the City administrator? 21 A. I don't know what you mean by 22 "familiar." 23 Q. Well, isn't it true that you knew the 24 City of Sun Valley personnel, the policies and 25 procedures, correct?</p>	<p style="text-align: right;">Page 186</p> <p>1 A. What's your question? 2 Q. Didn't you know -- you were familiar 3 with the Sun Valley City policies while you were 4 the City administrator? 5 A. I don't know what you mean by that. 6 I'm sorry. 7 Q. Well, we'll get to that document later. 8 But there's a document that says that as the City 9 administrator, essentially, I'm paraphrasing, you 10 have the ultimate and final authority to interpret 11 all City policies, even above the mayor. Do you 12 remember saying that in a memo? 13 A. I don't remember it verbatim. I do 14 remember something like that in the personnel 15 policies. 16 Q. So, in essence, you would have to be 17 familiar with those policies in order to interpret 18 those, correct? 19 MR. SWARTZ: Objection; foundation, 20 argumentative. 21 THE WITNESS: So what's your question? 22 Q. BY MR. NAYLOR: Did you know that 23 there was a City of Sun Valley harassment, 24 antiharassment policy and guideline? 25 A. I think I said I reviewed it.</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Okay. Did you follow it? 2 A. As I sit here today, I don't recall 3 what it says word for word. 4 Q. And you claim that Nils Ribí harassed 5 you; is that correct? 6 A. He did harass me. 7 Q. And what was the nature of the 8 harassment? 9 A. Those allegations are in the complaint. 10 Q. What do you remember about those 11 allegations as you sit here today? What was the 12 nature of his harassment? 13 A. Do you have a specific question? 14 Q. What was the nature of the harassment 15 that you claim Nils Ribí did? 16 A. The bigger incidents are in the 17 complaint. The nature of his harassment was to 18 try to intimidate me into doing what he wanted me 19 to do. He had a pattern of coming by City Hall 20 during the lunch hour when he knew that the mayor 21 and most of the other City employees were not in 22 City Hall. He would stand in my doorway and try 23 to intimidate me into doing things that had -- I 24 had not been directed to do by the mayor. When I 25 would suggest that he talk to the mayor, because</p>	<p style="text-align: right;">Page 188</p> <p>1 it was very -- made very clear to me that my 2 direction came from the mayor, he got very 3 agitated. He would raise his hands and lean 4 through the doorway and shake his hands and say, 5 "No. No. You don't understand." He yelled at me 6 that the mayor did not know what his job was. 7 Q. That the mayor did not know whose job 8 was? 9 A. What his job was. 10 Q. When you say "his job," what are you 11 talking about? 12 A. That Mayor Willich did not know what 13 his job was. 14 Q. That Mayor Willich did not know what 15 Mayor Willich's job was? 16 A. Yes. 17 Q. You said that he would intimidate you. 18 How would he intimidate you? 19 A. His behavior became erratic and more 20 volatile during the period of time when I was at 21 the City. 22 Q. Did you know him before the time you 23 were at the City? 24 A. Did I know him? 25 Q. Yeah.</p>

47 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1 A. No.</p> <p>2 Q. I don't quite understand what you just</p> <p>3 said. His behavior became more erratic during the</p> <p>4 time when you were at the City?</p> <p>5 A. So initially in 2008 --</p> <p>6 Q. Um-hum.</p> <p>7 A. -- it wasn't -- I don't recall too</p> <p>8 many incidents then. But as time went on, and</p> <p>9 particularly after he was reelected and he knew</p> <p>10 that Mayor Willich would have to go through an</p> <p>11 election, his behavior became more aggressive</p> <p>12 towards me.</p> <p>13 Q. When you say "aggressive," in what</p> <p>14 way?</p> <p>15 A. More demanding. He would call me</p> <p>16 on the telephone and be very, very angry over</p> <p>17 something that was going on and yell at me.</p> <p>18 Q. When you say he was "demanding," what</p> <p>19 types of things was he demanding?</p> <p>20 A. Well, the bigger complaints -- the</p> <p>21 bigger incidents are in the complaint.</p> <p>22 Q. I'm just asking what you recall today.</p> <p>23 A. There were many.</p> <p>24 Q. And when you say "demanding," what</p> <p>25 types of things was he demanding? Just give me an</p>	<p style="text-align: right;">Page 190</p> <p>1 example.</p> <p>2 A. How I spent my time as a City</p> <p>3 administrator working on particular projects that</p> <p>4 he wanted me to work on when I had received no</p> <p>5 direction from the mayor.</p> <p>6 Q. Were any of these demands by Mr. Ribi</p> <p>7 unrelated to your work as the City administrator?</p> <p>8 A. My job and what I did was defined by</p> <p>9 the mayor.</p> <p>10 Q. Were any of these demands by Mr. Ribi</p> <p>11 unrelated to your work as the City administrator?</p> <p>12 A. My job was defined to me by the</p> <p>13 mayor and what -- how I should spend my time.</p> <p>14 Councilman Ribi tried to direct my time into other</p> <p>15 areas that I had not received direction from the</p> <p>16 mayor. And when I would refer him back to the</p> <p>17 mayor to go talk to the mayor and work it out or</p> <p>18 talk to the council, he became very agitated.</p> <p>19 And it -- over time, his behavior became more</p> <p>20 aggressive to me, and it started to frighten me.</p> <p>21 Q. Okay. Let me go back to what he was</p> <p>22 demanding. You're saying that -- is it true that</p> <p>23 anything he was demanding was related in some way</p> <p>24 to the City of Sun Valley?</p> <p>25 A. That's not the same question that you</p>
<p style="text-align: right;">Page 191</p> <p>1 asked before. So ask it again, and I'll answer</p> <p>2 it.</p> <p>3 Q. With regard to when you say he was</p> <p>4 demanding, isn't it true that anything he was</p> <p>5 demanding was related in some way to the business</p> <p>6 of the City of Sun Valley?</p> <p>7 A. I don't recall sitting here today</p> <p>8 anything that wasn't related to the business of</p> <p>9 the City of Sun Valley, but it would be most --</p> <p>10 there were occasions where he was directing me to</p> <p>11 use my time where I had not been directed to do</p> <p>12 that by the mayor.</p> <p>13 Q. Are you saying that you were -- you</p> <p>14 only did tasks as directed by Mayor Willich?</p> <p>15 A. When it got to the point where I felt</p> <p>16 it was a problem with him trying to direct my</p> <p>17 time, I felt that I needed to refer him back to</p> <p>18 Mayor Willich.</p> <p>19 Q. My question -- go ahead.</p> <p>20 A. Initially, in the early years, I tried</p> <p>21 very hard to build a positive relationship with</p> <p>22 him, as well as the other council members.</p> <p>23 Q. Are you saying that you were only --</p> <p>24 that you only did tasks that were assigned to you</p> <p>25 directly by Mayor Willich?</p>	<p style="text-align: right;">Page 192</p> <p>1 A. No.</p> <p>2 Q. Okay. So you had some flexibility to</p> <p>3 perform your responsibilities as the City</p> <p>4 administrator, correct?</p> <p>5 A. I'm sorry. What was your question?</p> <p>6 Q. You had flexibility to do what you</p> <p>7 needed to do to get your job done as the City</p> <p>8 administrator, right?</p> <p>9 A. I had some flexibility.</p> <p>10 Q. And on occasion, city council members</p> <p>11 might need a document, like a budget or some City</p> <p>12 document to review, wouldn't they?</p> <p>13 A. What's your question?</p> <p>14 Q. Wouldn't city council members come to</p> <p>15 you and say that they needed some document to</p> <p>16 review, maybe a budget document?</p> <p>17 A. Not all of them.</p> <p>18 Q. But some of them would?</p> <p>19 A. Some of them would on occasion.</p> <p>20 Nils Ribi was not occasionally.</p> <p>21 Q. But my question is did he ever ask for</p> <p>22 anything that was inappropriate for a city council</p> <p>23 member to review?</p> <p>24 A. I don't recall. I can't even think of</p> <p>25 what would be an inappropriate document for a</p>

48 (Pages 189 to 192)

<p style="text-align: right;">Page 197</p> <p>1 VERIFICATION</p> <p>2</p> <p>3 STATE OF IDAHO)</p> <p>4)</p> <p>5 County of Ada)</p> <p>6 I, SHARON R. HAMMER, being first duly</p> <p>7 sworn on my oath, depose and say:</p> <p>8 That I am the witness named in the</p> <p>9 foregoing deposition, taken on March 18, 2014,</p> <p>10 consisting of pages numbered 1 to 198, inclusive;</p> <p>11 That I have read the said deposition and</p> <p>12 know the contents thereof; that the questions</p> <p>13 contained therein were propounded to me; that the</p> <p>14 answers to said questions were given by me, and</p> <p>15 that the answers as contained therein (or as</p> <p>16 corrected by me therein) are true and correct.</p> <p>17</p> <p>18 DEPONENT</p> <p>19</p> <p>20 Signed and sworn before me this of . . .</p> <p>21 NOTARY PUBLIC</p> <p>22 Residing at</p> <p>23 My commission expires</p> <p>24</p> <p>25 Job No. 28140</p>	<p style="text-align: right;">Page 198</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I, BROOKE R. BOHR, a Notary Public in</p> <p>5 and for the State of Idaho, do hereby certify:</p> <p>6 That prior to being examined, the</p> <p>7 witness named in the foregoing deposition was by</p> <p>8 me duly sworn to testify the truth, the whole</p> <p>9 truth, and nothing but the truth;</p> <p>10 That said deposition was taken down by</p> <p>11 me in shorthand at the time and place therein</p> <p>12 named and thereafter reduced into typewriting</p> <p>13 under my direction, and that the foregoing</p> <p>14 transcript contains a full, true, and verbatim</p> <p>15 record of the said deposition.</p> <p>16 I further certify that I have no</p> <p>17 interest in the event of the action.</p> <p>18 WITNESS my hand and seal April 1, 2014.</p> <p>19</p> <p>20</p> <p>21 NOTARY PUBLIC in and for the State of Idaho;</p> <p>22 residing at Meridian, Idaho.</p> <p>23</p> <p>24 My commission expires September 7, 2019.</p> <p>25 CSR No. 753</p>

50 (Pages 197 to 198)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.
DONOVAL, husband and wife,

Plaintiffs,

v.

CITY OF SUN VALLEY; NILS RIBI, in
his individual and official capacity; and
DEWAYNE BRISCOE, in his individual
and official capacity,

Defendants.

Case No. 1:13-CV-00211-EJL

**MEMORANDUM DECISION AND
ORDER**

Pending before the Court in the above-entitled matter are Defendants' Motion for Judgment on the Pleadings and Plaintiffs' Motion to Convert. The parties have filed responsive briefing and the matters are ripe for the Court's consideration. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, the Motions shall be decided on the record before this Court without oral argument.

MEMORANDUM DECISION AND ORDER - 1

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Sharon R. Hammer and James R. Donoval, husband and wife, filed the Complaint against Defendant City of Sun Valley ("Sun Valley" or "the City") as well as Defendants Nils Ribí and DeWayne Briscoe in both their individual and official capacity. (Dkt. 1.) Mr. Ribí served as an elected City Council Member from January of 2006 to January of 2014 and was City Council President from 2008 through 2009. Mr. Briscoe is the current elected Mayor of Sun Valley as of January 3, 2012. Prior to that, since January of 2008, Mr. Briscoe was also an elected member of the City Council. Mr. Briscoe served as City Council President from January 2010 to January of 2012. The claims raised in the Complaint are:

- Count 1 Gender Discrimination and Harassment, Idaho Code §§ 67-5901, *et seq.*, against Sun Valley;
- Count 2 Retaliation, Idaho Code §§ 67-5901, *et seq.*, against Sun Valley;
- Count 3 Retaliation Freedom of Speech, 42 U.S.C. § 1983, against all Defendants;
- Count 4 Retaliation Access to the Courts, 42 U.S.C. § 1983, against all Defendants;
- Count 5 Retaliatory Investigation, 42 U.S.C. § 1983, against all Defendants;
- Count 6 Retaliation against the Plaintiffs'¹ Right to Intimate and Political Association, 42 U.S.C. § 1983, against all Defendants;
- Count 7 Deprivation of Property, 42 U.S.C. § 1983, against all Defendants;

¹ All of the claims in the Complaint are alleged to have occurred against Ms. Hammer with the exception of the Sixth Cause of Action for retaliation which is claimed to have occurred against both Ms. Hammer and Mr. Donoval. (Dkt. 1.)

- Count 8 Unconstitutional Bias Deprivation of Property, 42 U.S.C. § 1983, against all Defendants;
- Count 9 Deprivation of Due Process, 42 U.S.C. § 1983, against all Defendants;
- Count 10 Civil Conspiracy, 42 U.S.C. §§ 1983, 1985, against all Defendants;
- Count 11 Assault of Ms. Hammer against Mr. Ribí individually;
- Count 12 Wrongful Termination of Ms. Hammer against all Defendants;
- Count 13 Breach of Contract against all Defendants;
- Count 14 Negligent Infliction of Emotional Distress against Defendants Ribí and Briscoe.

(Dkt. 1.) The claims relate to events occurring during Ms. Hammer's employment as the City Administrator of Sun Valley from June 1, 2008 until January 19, 2012. During that time, Plaintiffs allege that Ms. Hammer was repeatedly and continuously harassed, physically and emotionally intimidated, verbally abused, and assaulted by Mr. Ribí. Ms. Hammer asserts she reported these incidents to City authorities. In retaliation, Plaintiffs argue, Mr. Ribí and others trumped up allegations of misconduct by Ms. Hammer resulting in her twice being placed on administrative leave pending an independent internal investigation and ultimately terminated. Plaintiffs further argue Mr. Ribí acted with hostility towards them due to Mr. Donoval's political affiliations. Other of the factual allegations relate to improper conduct by various City employees concerning their investigation and allegations of financial misconduct by Ms. Hammer and their making of disparaging public statements concerning both Plaintiffs. Ms. Hammer alleges the Defendants engaged in actions designed to publicly destroy her personal and professional reputations in retaliation for her complaints of misconduct against Mr. Ribí.

MEMORANDUM DECISION AND ORDER - 3

Ms. Hammer filed an administrative charge of discrimination and retaliation against the City with the Idaho Human Rights Commission (“IHRC”) and the Equal Employment Opportunity Commission (“EEOC”). A Right to Sue letter was issued and, thereafter, Ms. Hammer filed a complaint in the Blaine County District Court pursuant to the Idaho Protection of Public Employee’s Act (“IPPEA”). That action was ultimately dismissed. On May 3, 2013, Plaintiffs filed the Complaint in this case. Attached to the Complaint are: 1) the City’s Personnel Policies & Procedures Manual, 2) the City’s Municipal Government City Council and Mayor Powers and Authorities, 3) the City Code of Ethics and Code of Conduct, 4) Ms. Hammer’s Employment Agreement with the City, 5) Ms. Hammer’s Employment Agreement Extension, 6) job description for the City’s Finance Manager/Treasurer, 7) the City’s Credit Card Policy, 8) job description for the City Clerk, and 9) Engagement Letter for the City’s Investigation. (Dkt. 1.) The Court now considers the Motion for a Judgment on the Pleadings and related filings and finds as follows.

STANDARD OF LAW

Motions for a judgment on the pleadings are governed by Federal Rule of Civil Procedure 12(c) which provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is evaluated under the same standard applicable to motions to dismiss brought under Rule 12(b)(6). *See Enron Oil Trading & Trans. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir. 1997). Thus, the

MEMORANDUM DECISION AND ORDER - 4

standard for a motion for judgment on the pleadings is that articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

A motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a party's claim for relief.² When considering such a motion, the Court's inquiry is whether the allegations in a pleading are sufficient under applicable pleading standards. Federal Rule of Civil Procedure 8(a) sets forth minimum pleading rules, requiring only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

A motion to dismiss will only be granted if the complaint fails to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (citations omitted). A judgment on the pleadings may be granted only when it appears beyond doubt that the claiming party can prove no set of facts in support of his claim

² Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

which would entitle him to relief.” *Enron Oil*, 132 F.3d at 529 (internal quotations and citations omitted).

When deciding a motion for judgment on the pleadings, the Court assumes the allegations in the complaint are true and construes them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). A judgment on the pleadings is appropriate when, taking all the allegations in the complaint as true, the moving party is entitled to judgment as a matter of law. *Milne ex rel. Coyne v. Stephen Slesigner, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005); *Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993). Although “we must take all of the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555. Therefore, “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *Caviness v. Horizon Comm. Learning Cent., Inc.*, 590 F.3d 806, 811-12 (9th Cir. 2010) (citation omitted).

ANALYSIS

1. Plaintiffs’ Motion to Convert

As a preliminary matter, Plaintiffs have filed a Motion to Convert the Motion to Dismiss into a motion for summary judgment. (Dkt. 22.) Plaintiffs argue the Defendants’ waiver argument is most suitable for analysis under the summary judgment standard because the Court should consider materials outside of the Plaintiffs’ Complaint.

MEMORANDUM DECISION AND ORDER - 6

Defendants oppose the Motion arguing they have not relied upon any materials outside of the pleadings or written exhibits attached to the pleadings. (Dkt. 29.) Further, Defendants argue, no additional materials other than those attached to the pleadings should be considered because the terms of the contract are clear and unambiguous.

“When ruling on a Rule 12(b)(6) motion to dismiss, if a district court considers evidence outside the pleadings, it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond.” *See United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (citations omitted). The Court may, however, consider facts established by exhibits attached to the Complaint, facts which may be judicially noticed, and matters of public record. *Id.* Consideration of such documents outside the complaint does not convert the motion to dismiss into a motion for summary judgment. *Id.*; *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999).

Here, the Court can and properly has considered the documents attached to the pleadings on this Rule 12(c) Motion without converting it to a motion for summary judgment. (Dkt. 1, 11.) The Court has not, however, considered any documents that were not attached to the pleadings. In doing so the Court notes that even though Plaintiffs’ allegations are accepted as true for the purposes of the instant Rule 12(c) Motion, the Court need not accept as true allegations that contradict matters contained within exhibits to the nonmoving party’s pleading, documents referred to in the non-moving party’s pleading, or materials that can be judicially noticed. *See Sprewell v. Golden State*

MEMORANDUM DECISION AND ORDER - 7

Warriors, 266 F.3d 979, 989, amended on other grounds, 275 F.3d 1187 (9th Cir. 2001); *In re Silicon Graphics Inc. Securities Litig.*, 183 F.3d 970, 986 (9th Cir. 1999); *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n. 18 (9th Cir. 1999). The Plaintiffs' Motion to Covert is denied.

Furthermore, in deciding this Motion, the Court has not considered any extrinsic evidence. The instant Motion is for a judgment on the pleadings raising a legal question as to the implications, if any, the terms of the written contracts have on the claims brought by Plaintiffs. When based on the contractual language itself without resort to extrinsic evidence, interpretation of a contract is a purely legal question which is susceptible to a motion for judgment on the pleadings. *Cf. Atel Financial Corp. v. Quaker Coal Co.*, 321 F.3d 924, 925–26 (9th Cir. 2003) (interpretation of a contract is a pure question of law). As stated herein, the language of the contracts at issue is clear and unambiguous. Therefore, the terms are given their plain meaning. *See Wylie v. State, Idaho Transp. Bd.*, 253 P.3d 700, 706 (Idaho 2011) ("If the contract's terms are clear and unambiguous, the determination of the contract's meaning and legal effect are questions of law and the meaning of the contract and the intent of the parties must be determined from the plain meaning of the contract's own words. If, however, the contract is determined to be

ambiguous, the interpretation of the document is a question of fact which focuses upon the intent of the parties.”) (quoting *Page v. Pasquali*, 244 P.3d 1236, 1239 (2010)).

2. Defendants’ Motion for a Judgment on the Pleadings

On June 1, 2008, Ms. Hammer signed a City Administrator Employment Agreement (“Employment Agreement”) beginning her term of employment with the City. (Dkt. 1-5, Ex. 4.) Thereafter, on January 23, 2012, Ms. Hammer signed the Supplemental Release of Claims (“Supplemental Release”) which effectively ended her employment with the City. (Dkt. 11-1, Ex. A.) Defendants argue that under the plain and unambiguous terms of those documents, Ms. Hammer waived and/or released all but two of the claims brought in this case.³ (Dkt. 18 at 3-5) (Dkt. 27 at 2-3.) Defendants maintain that Ms. Hammer was terminated without cause pursuant to Section 3.A. of the Employment Agreement which triggered both 1) a waiver of any claim arising from a termination without cause pursuant to a severance payment and 2) a release of all claims against the City effective upon receipt of said severance payment. (Dkt. 18 at 4.)⁴

Plaintiffs counter that the Defendants have not shown that, based on the totality of the circumstances, Ms. Hammer intentionally, voluntarily, knowingly, and deliberately waived her non-contract claims. (Dkt. 21 at 9, 12.) Plaintiffs maintain that Ms. Hammer

³ Defendants do not seek dismissal of Counts IX and XI as they do not arise out of the termination and, therefore, were not waived/released under the terms of the contracts. (Dkt. 27.)

⁴ Defendants raise other arguments in their Motion but because the Court’s finding on the waiver/release argument is dispositive, the Court has not discussed the other grounds raised by the defense.

did not intend to waive any of her non-contract tort or constitutional claims and that she, through her attorney/husband Mr. Donoval, repeatedly advised the City that Ms. Hammer would not waive or release any non-contract claims other than those arising from the severance package. Thus, Ms. Hammer's position is that her intent was that the release only extend to claims arising out of any dispute related to the severance. (Dkt. 21 at 10-11.) Plaintiffs further assert that there is a presumption against waivers and, given the totality of the circumstances here, Ms. Hammer was coerced into signing the release, and the release was not supported by consideration.

Section 3.A of the Employment Agreement states:

Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

(Dkt. 1-5, Ex. 4 at 2) (emphasis in original.)

The Supplemental Release signed by Ms. Hammer on January 23, 2012, states:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(Dkt. 21 at 10) (citing Dkt. 11-1, Ex. A.)

Having reviewed the pleadings and documents at issue on this Motion, the Court finds the Employment Agreement and Supplemental Release of Claims to be clear and unambiguous. In Idaho:

When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law. An unambiguous contract will be given its plain meaning. The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered. In determining the intent of the parties, this Court must view the contract as a whole.... Whether a contract is ambiguous is a question of law. A contract is ambiguous if it is reasonably subject to conflicting interpretations.

Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co., 291 P.3d 399, 406 (Idaho 2012) (quoting *Bakker v. Thunder Spring–Wareham, LLC*, 108 P.3d 332, 337 (Idaho 2005) (citation omitted)). The meaning of an unambiguous contract must be determined from the plain meaning of the contract's own words. *State v. Hosey*, 11 P.3d 1101, 1104 (Idaho 2000). Where a contract is determined to be ambiguous, interpretation of the contract is a question of fact that focuses on the intent of the parties. *Id.* Whether the facts establish violation of the contract is a question of law over which the court exercises free review. *Id.*

MEMORANDUM DECISION AND ORDER - 11

There is no ambiguity in the terms, words, or phrases used in either document as to the particular terms in question here. As discussed below, the terms of the two documents are clear and not subject to conflicting interpretations when viewed as a whole. Accordingly, the Court will consider the terms at issue here from the four corners of the documents giving the plain meaning to the language therein.

i) Waiver/Release of Claims

In considering the Motion, the Court must first determine whether, as a matter of law, the language of the documents themselves constitutes a waiver and/or release of Plaintiffs' claims.

Again, the Supplemental Release signed by Ms. Hammer on January 23, 2012, states:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(Dkt. 21 at 10) (citing Dkt. 11-1, Ex. A.) Section 3.A. of the Employment Agreement further clarifies that the "severance payment is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement." (Dkt. 1-5, Ex. 4 at 2) (emphasis in original.)

The Court concludes that, as a matter of law, this express unambiguous language plainly, clearly, and unambiguously waived and/or released “any and all claims for damages of any kind arising from a termination without cause” that Ms. Hammer may have had and forecloses her “right to bring a claim of any kind for damages against Employer arising from a termination without cause.” (Dkt. 1-5, Ex. 4 at 2.) Ms. Hammer was terminated on January 19, 2012. There is no dispute that she accepted a severance payment and signed the release of claims quoted above on January 23, 2012. Thus, the terms of Section 3.A. of the Employment Agreement waiving/releasing “any and all claims” arising from a termination without cause is effective as to any claims in existence as of that date. There simply is no other reasonable interpretation of the express language of the documents which use the phrases: “any and all claims,” “sole exclusive remedy,” and “right to bring a claim of any kind for damages.” The plain meaning of these words, phrases, and terms is abundantly clear.

Plaintiffs contend that Ms. Hammer’s termination was not “without cause” and, therefore, not subject to the waiver provision of Section 3.A. of the Employment Agreement.⁵ This argument is contrary to the plain and unambiguous language of the Employment Agreement and the undisputed fact that she accepted the severance payment as provided for in Section 3.A. of the Employment Agreement. (Dkt. 1-5, Ex. 4) (Dkt. 11-

⁵ The Complaint at first acknowledges that the reason for Ms. Hammer’s termination from her position as City Administrator on January 19, 2012 was pursuant to the “without cause” terms of her employment contract. (Dkt. 1 at ¶¶ 75, 265) (quotations in original.) The Complaint later alleges that her termination was actually for “cause” and in retaliation for her complaints of harassment and discrimination. (Dkt. 1 at ¶¶ 266, 305, 402, 438-441) (quotations in original.)

1, Ex. A.) Notably, the release Ms. Hammer signed specifically references Section 3.A. of the Employment Agreement which applies to terminations “without cause.” (Dkt. 11-1, Ex. A.) To now argue her termination was for cause is contrary to the plain and unambiguous language of the documents she affixed her signature to. Based on the undisputed facts, the pleadings, and the relevant documents attached thereto, the Court finds as a matter of law that the terms of the contract constitute a waiver and/or release of all of Ms. Hammer’s claims with the exception of Counts IX and XI.

ii) The Waiver/Release was Voluntary, Intentional, and Knowing

The Court must next determine whether Ms. Hammers’ release of her claims was “voluntary, deliberate and informed.” *Stroman v. West Coast Grocery Co.*, 884 F.2d 458, 462 (9th Cir. 1989) (a Title VII act claim) (quoting *Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1989)) (citations omitted); *see also Jones v. Taber*, 648 F.2d 1201, 1203 (9th Cir. 1981) (“A release of claims under section 1983 is valid only if it results from a decision that is voluntary, deliberate, and informed.”). The validity and interpretation of a release of significant federal rights is governed by federal law. *Salmeron*, 724 F.2d at 1361 (citation omitted). A release of claims for violations of civil and constitutional rights must be voluntary, deliberate and informed. *Id.* That determination is “predicated upon an evaluation of several indicia arising from the circumstances and conditions under which the release was executed.” *Stroman*, 884 F.2d at 462 (quoting *Coventry v. United States Steel Corp.*, 856 F.2d 514, 522 (3d Cir. 1988)); (citing *Salmeron*, 724 F.2d at 1362 (whether a release was voluntary must be determined

from all the circumstances); *Jones*, 648 F.2d at 1203 (whether release was voluntary depends on both objective and subjective factors)). “Of primary importance in this calculation is the clarity and lack of ambiguity of the agreement,...the plaintiff’s education and business experience,...the presence of a noncoercive atmosphere for the execution of the release,...and whether the employee had the benefit of legal counsel.” *Stroman*, 884 F.2d at 462 (citations and quotations omitted). The Supreme Court has held that “a waiver of constitutional rights in any context must, at the very least, be clear.” *Fuentes v. Shevin*, 407 U.S. 67, 94 (1972).

Accepting the facts as stated in the pleadings as true, the Court finds the totality of the circumstances evidences that Ms. Hammer made a voluntary, deliberate and informed waiver of any and all of her claims when she accepted the agreed to severance payment. Ms. Hammer signed the release after being advised by her legal counsel and husband on the matter. The plain and unambiguous terms make abundantly clear that the acceptance of the severance payment waives and/or releases any and all claims Ms. Hammer may have had for damages arising from her termination. Although Plaintiffs now argue they did not know or intend to give up their non-contract tort and constitutional claims, the fact remains that the plain and express terms of the documents they signed clearly state otherwise. Ms. Hammer is a knowledgeable person who worked in a professional capacity for the City for several years and was advised by her legal counsel and husband before signing the release. Had the Plaintiffs believed and/or intended something other than what was plainly and explicitly stated in the written documents they could have and

MEMORANDUM DECISION AND ORDER - 15

should have included language to that effect in the documents themselves.

Plaintiffs argue a release of constitutional claims must be supported by consideration. (Dkt. 21 at 15-16.) Plaintiffs are correct. "Under federal law, a valid release must be supported by consideration." *Salmeron*, 724 F.2d at 1362 (citing *Maynard v. Durham & S.R. Co.*, 365 U.S. 160, 162-63 (1961) (citations omitted)). Here, however, consideration for the release of "any and all claims" was given in the form of the six-months severance pay which Plaintiffs do not dispute having received.

The Plaintiffs' further argue there is an inherent presumption against the waiver of constitutional rights and they could not have prospectively waive their constitutional or statutory rights to claims that had not yet accrued at the time of contracting. (Dkt. 21 at 11-12.) Defendants maintain that even if she did not prospectively waived her claims in the Employment Agreement, she released all claims she had against the City when she executed the Supplemental Release and accepted the severance payment. (Dkt. 27 at 3.)

Generally there cannot be a prospective waiver of an employee's rights. *See EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 616 (9th Cir. 1988) (Title VII discrimination case) (citation omitted). Here, however, the contract terms giving rise to the waiver/release became effective on January 23, 2012 when Ms. Hammer signed the Supplemental Release. The actions giving rise to Plaintiffs claims had already occurred by that date and, therefore, the claims were known to Plaintiffs at the time Ms. Hammer signed the Supplemental Release.

Plaintiffs also assert they were coerced into signing the Supplemental Release;

MEMORANDUM DECISION AND ORDER - 16

pointing to the harassment by Mr. Ribí prior to her signing and Ms. Hammer's concerns for her "economic wherewithal." (Dkt. 21 at 13-15.) The Complaint alleges that at the time of her termination and the signing of the Supplemental Release, Ms. Hammer and her husband had both been subject to harassment. Those allegations describe the harassing environment Ms. Hammer claims she had endured leading up to and following her termination and the signing of the Supplemental Release. *See e.g.* (Dkt. 1 at ¶ 69, 76, 79, 103, 113, 179, 190-91, 199, 248, 251, 260, 262-70, 305.) There are, however, no factual allegations concerning the actual negotiations or signing of the release; let alone any that go to show Plaintiffs were coerced into signing the Supplemental Release.

Further, the Plaintiffs' response brief actually demonstrates that Plaintiffs understood the ramifications of signing the release by recognizing the choices Ms. Hammer was faced with: 1) signing the release and receiving the severance or 2) refusing to sign the release and forego any severance. (Dkt. 21 at 13-14.) This demonstrates that Ms. Hammer knew full well what choices she had when she elected to sign the release. Further, given the totality of the circumstances stated above – Ms. Hammer's knowledge and the fact she had been advised by legal counsel – the Court concludes that there are no facts alleged indicating Plaintiffs were coerced. The Plaintiffs' other arguments raised after the fact stating they had different intentions concerning the terms and disclaimers that they believe limited the release or preserved her constitutional claims also fail. The language of the contract could not be clearer. The waiver/release was as to "any and all claims" without any limitations.

MEMORANDUM DECISION AND ORDER - 17

Based on the foregoing, the Court finds the claims raised in Counts I-VIII, X, and XII-XIV have been waived and/or released by the express terms of the written documents as they are claims arising out of Ms. Hammer's termination without cause. The remaining claims are Count IX, Deprivation of Due Process against all Defendants, and Count XI, Assault against Mr. Ribí. (Dkt. 1.)

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings (Dkt. 18) is **GRANTED**. Counts I-VIII, X, and XII-XIV are **DISMISSED**. The Counts remaining for trial are IX and XI.



DATED: **June 17, 2014**

A handwritten signature in black ink, appearing to read "Edward J. Lodge".

Honorable Edward J. Lodge
U. S. District Judge

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Attorneys for Defendants City of Sun Valley, Ribi, and Briscoe

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHARON R. HAMMER and JAMES R.
DONOVAL, husband and wife,

Plaintiffs,

vs.

CITY OF SUN VALLEY; NILS RIBI, in his
individual and official capacity; and
DeWAYNE BRISCOE, in his individual and
official capacity,

Defendants.

Case No. 1:13-cv-211-EJL

**DECLARATION OF DEWAYNE
BRISCOE**

I, DEWAYNE BRISCOE, declare under penalty of perjury that the following is
true and correct:

1. I am over the age of eighteen (18) and competent to testify to the matters
herein. I make this declaration based upon my personal knowledge.

DECLARATION OF DEWAYNE BRISCOE - 1.

2. I am the Mayor of the City of Sun Valley and in that capacity I have access to and control over the documents identified below. Additionally, I am a named defendant in this lawsuit and have personal knowledge about the matters set forth herein.

3. Attached as **Exhibits A** is a true and correct copy of the minutes for the November 11 and 14, 2011 executive sessions of the Sun Valley City Council. (SV 2069-2070.)

4. Attached as **Exhibit B** is a true and correct redacted copy of a letter dated November 12, 2011, from James R. Donoval to Sun Valley, which was delivered on November 13, 2011. (SV 88-92) (redacted).

5. Attached as **Exhibit C** is a true and correct redacted copy of a letter dated November 15, 2011, from Donoval to Sun Valley. (SV 95-96) (redacted).

6. Attached as **Exhibit D** is a true and correct redacted copy of a letter dated November 16, 2011, from Donoval to Sun Valley. (SV 97-100) (redacted).

7. Attached as **Exhibit E** is a true and correct copy of the November 18, 2011 notice to Sharon Hammer placing her on paid administrative leave. (SV 337.)

8. Attached as **Exhibit F** is a true and correct copy of the December 20, 2011 Ball Report regarding Sharon Hammer, as well as the accompanying exhibits. (BALL 1-259) (filed on seal) Note that the Ball Report actually consisted of three separate reports covering allegations involving the Fire Department, Councilman Nils Ribi, and Hammer.

9. Attached as **Exhibit G** is a true and correct copy of the December 16, 2011 "NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION" to Sharon Hammer. (SV 338-339.)

DECLARATION OF DEWAYNE BRISCOE - 2.

10. Attached as **Exhibit H** is a true and correct copy of the December 16, 2011 Garrity Notice to Sharon Hammer. (SV 344-345.)

11. Attached as **Exhibit I** is a true and correct copy of the December 16, 2011 authorization to notify the Blaine County Prosecuting Attorney re: possible criminal misconduct. (SV 342.)

12. Attached as **Exhibit J** is a true and correct copy of the January 4, 2012 authorization to notify the Blaine County Prosecuting Attorney re: possible criminal misconduct. (SV 343.)

13. Attached as **Exhibit K** is a true and correct copy of the January 4, 2012 "NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION" to Hammer. (SV 340-341.)

14. Attached as **Exhibit L** is a true and correct copy of the January 4, 2012 Garrity Notice to Hammer. (SV 346-347). Similar notices were issued to other Sun Valley employees in connection with the Ball Investigation and findings regarding the Fire Department.

15. Attached as **Exhibit M** is a true and correct copy of the January 16, 2012 Press Release regarding the settlement of a lawsuit by Hammer against Sun Valley and Sun Valley officials. (SH-TIMELINE 000618.)

16. Attached as **Exhibit N** is a true and correct copy of the minutes from the January 19, 2012 City Council meeting. (SV 2084-2088.)

17. Attached as **Exhibit O** is a true and correct copy of a press release issued by Sun Valley about Hammer's employment termination. (HAMMER 000327.)

18. In February 20012, Sun Valley hired the law firm Moffatt Thomas Barrett Rock & Fields, Chtd., who engaged an independent accounting firm, Hagen, Streiff, Newton & Oshiro, P.C. to
DECLARATION OF DEWAYNE BRISCOE - 3.

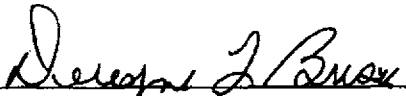
conduct a thorough audit of Sun Valley's financial matters from 2009 through 2011 (the "Forensic Audit"). Attached as **Exhibit P** is a true and correct copy of Forensic Audit Summary Report. (SV 2718-2734.)

19. Attached as **Exhibit Q** is a true and correct copy of a letter from the Blaine County Prosecutor, Jim Thomas, about his decision not to charge Hammer with criminal misconduct. (SV 1175-1183.)

20. During the summer of 2012, two Sun Valley employees, Michelle Frostenson, former Treasurer, and Kelly Ek, former Clerk, provided notices of tort claims against Sun Valley and various Sun Valley officials, including Sharon Hammer, based on allegations that they had been retaliated against after making various allegations of misconduct. These matters were settled in June 2012. Sun Valley published a press release about each settlement, attached as **Exhibit R** (SV 2413) and **Exhibit S** (SV 2414.)

PURSUANT to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 26 day of June, 2014.


DeWayne Briscoe

DECLARATION OF DEWAYNE BRISCOE - 4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following person(s):

- Eric Swartz: eric@jonesandswartzlaw.com
- Joy Vega: joy@jonesandswartzlaw.com

8406_31 Declaration of Briscoe.wpd

DECLARATION OF DEWAYNE BRISCOE - 5.

ORIGINAL

**SPECIAL COUNCIL MEETING MINUTES
OF THE MAYOR AND CITY COUNCIL
IN THE COUNCIL CHAMBERS - 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
NOVEMBER 11, 2011 2:00 P.M.**

The Mayor and the City Council of Sun Valley, Blaine County, State of Idaho, met in a Special Council Meeting in the Sun Valley City Hall Council Chambers on November 11, 2011 2:00 p.m.

**CALL TO ORDER
ROLL CALL**

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

ABSENT: Council member Joan Lamb.

**EXECUTIVE SESSION
MOTION**

Council member Nils Ribi moved to enter into Executive Session pursuant to Idaho Code 67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Executive Session began at 2:10 p.m.
Executive Session ended at 4:45 p.m.

**AMEND AGENDA
MOTION**

Council President Dewayne Briscoe moved to amend the agenda to add an item authorizing the Mayor and City Attorney to have a discussion with a City Employee, seconded by Council member Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.
The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason to amend the agenda was based on information received by Council in Executive Session.

MOTION

Council member Nils Ribi moved to approve authorizing the Mayor and City attorney to meet with an employee consistent with what was discussed in Executive Session, seconded by Bob Youngman.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.

NAYES: None
Council member Joan Lamb was absent for this vote.

MOTION

Council President Dewayne Briscoe moved to continue the Special Council meeting date certain to Monday November 14th, 2011 at 10:00 a.m, seconded by Council member Bob Youngman.
Council member Joan Lamb was absent for this vote.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and Council member Nils Ribi.
NAYES: None

The Mayor declared the motion carried.

RECESS

Mayor Willich recessed the meeting at 4:50 p.m.

**SPECIAL COUNCIL MEETING MINUTES OF THE MAYOR AND CITY COUNCIL CONTINUED
CITY OF SUN VALLEY, IDAHO**

**COUNCIL MEETING OF NOVEMBER 11, 2011.
RECONVENED NOVEMBER 14, 2011 9:00 A.M
ROLL CALL**

PRESENT: Mayor Wayne Willich, Council President Dewayne Briscoe, Council member Bob Youngman, Council member Nils Ribi and Council member Joan Lamb.

ABSENT: None
Council member Joan Lamb participated via telephone.

EXECUTIVE SESSION

MOTION

Council President Dewayne Briscoe moved to enter into Executive Session pursuant to Idaho Code 67-2345 1 (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent or public school student seconded by Council member Bob Youngman.

Executive Session began at 9:00 a.m.
Executive Session ended at 12:00 p.m.

AMEND AGENDA

MOTION

Council member Bob Youngman moved to add an item to the agenda to discuss hiring an attorney to conduct an independent investigation, seconded by Council President Dewayne Briscoe.

AYES: Council President Dewayne Briscoe, Council member Bob Youngman, Council member Nils Ribi and Council member Joan Lamb.

NAYES:None

The Mayor declared the motion carried.

Council member Bob Youngman stated the good faith reason was this item just arose during Executive Session

Council member Nils Ribi indicated he was opposed to starting an independent investigation until Mayor Willich placed the City Administrator on a Leave of Absence.

MOTION

Council member Bob Youngman moved to authorize the Mayor to engage an attorney to conduct an independent investigation, seconded by Council President Dewayne Briscoe

AYES: Council President Dewayne Briscoe, Council member Bob Youngman and

NAYES: Council member Nils Ribi.

Council member Joan Lamb was unable to vote due to a cellular disconnection.

The Mayor declared the motion carried

JAMES R. DONOVAL

Attorney

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com

STRICTLY CONFIDENTIAL
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In Contemplation Of Litigation

November 12, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Sun Valley City Administrator

Mayor Willich:

Be advised that I represent Ms. Hammer related to the oral allegations of impropriety forwarded to Ms. Hammer late in the day on Friday, November 11, 2011, by yourself and Sun Valley City Attorney Adam King. These allegations had been discussed by yourself and Mr. King with Sun Valley City Council members Nils Ribi, Bob Youngman and DeWayne Briscoe during a Sun Valley City Council Executive Session earlier in the day. Pursuant to both Idaho State Statutes and the City Of Sun Valley Policies And Procedures, the Sun Valley City Council has no independent authority to take disciplinary action or to terminate Ms. Hammer. Only the Mayor Of Sun Valley can authorize the termination or disciplinary action of a City Of Sun Valley employee, and in particular the Sun Valley City Administrator (namely, Ms. Hammer). Thus the termination payment offered to Ms. Hammer as described by yourself and Mr. King as being made on behalf of Mr. Ribi, Mr. Youngman and Mr. Briscoe, is unauthorized under Idaho law and the City Of Sun Valley policies, and is therefore a nullity. Therefore, no response to Mr. Ribi's, Mr. Youngman's and Mr. Briscoe's request will be forthcoming.

Both you and Mr. King described allegations that were discussed at the Executive Session on Friday. However, no written corroboration or written detail of such allegations were provided to Ms. Hammer during her discussions with you and Mr. King. Although you hinted at other allegations at that time, the two main allegations of impropriety described to Ms. Hammer was that Ms. Hammer somehow violated City Of Sun Valley vacation pay and use of City Of Sun Valley automobile policies. Ms. Hammer un-categorically denies any such allegations.


Ms. Hammer Was Granted Flexible Personal Time And Was Authorized To Use A City Of Sun Valley Vehicle

Although Ms. Hammer refuses to respond in detail to any allegations until such are detailed in a formal written charging document, it should be noted that Section 10 of the existing City Administrator Employment Agreement between the City Of Sun Valley and Ms. Hammer provides that "the Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate." Ms. Hammer discussed a flexible work schedule with you in which you agreed that hours worked outside of a normal 8 a.m. to 5 p.m. workday could be taken off without the use of vacation time. Additionally, Ms. Hammer requested and you approved her use of the City Of Sun Valley automobile at issue. Should the City Of Sun Valley, and in particular Mayor-Elect Briscoe, wish to change the current policies you implemented related to both flexible time off and the use of the City Of Sun Valley owned automobile, Ms. Hammer will comply with those directives. However, for the City Of Sun Valley to retroactively modify either policy as a basis for disciplinary action or for termination of Ms. Hammer has no support in law, logic or basic fairness, and will be challenged and litigated to the fullest extent, if required.

Mr. Ribí Is Seeking Retribution For Ms. Hammer's Reporting Of His Own Abusive Behavior And Harassment

On multiple occasions, Ms. Hammer has been verbally and mentally abused by Sun Valley Council Member Nils Ribí, and on at least one occasion was physically threatened by Mr. Ribí. These incidents were witnessed by others and reported to you, Mr. King and Sun Valley Police Chief Cam Daggett. It is my understanding that you have also notified Mr. Ribí of his inappropriate conduct towards Ms. Hammer. Ms. Hammer has required medical and personal counseling due to the harassment inflicted by Mr. Ribí, and Mr. Ribí's actions and the results of his actions have been documented.

To date, Ms. Hammer has refrained from prosecuting Mr. Ribí and the City Of Sun Valley for harassment, as would be her right pursuant to the clearly established Sun Valley policies and procedures on harassment of employees. However, it is now clear to Ms. Hammer that due to the impending change of administration, that by seeking her dismissal that Mr. Ribí is seeking retribution against Ms. Hammer for Ms. Hammer's previous reporting of Mr. Ribí's inappropriate action against Ms. Hammer to yourself and other Sun Valley officials. Thus, should the City Of Sun Valley, and in particular Mr. Ribí, continue to make allegations of impropriety against Ms. Hammer, she will prosecute Mr. Ribí and the City Of Sun Valley for harassment, for defamation of character and for retaliatory discharge to the full extent of the law. In doing so, Ms. Hammer will seek a full investigation through discovery and disclosure of facts of Mr. Ribí's own history of misconduct



[REDACTED]

[REDACTED]

Sun Valley City Attorney Adam King Should Be Barred From Further Participation In The Matter

We are seeking that Sun Valley City Attorney Adam King be barred from any further involvement in any matters related to Ms. Hammer. Mr. King has been notified by both you and Ms. Hammer of multiple issues related to the personnel problems associated with Mr. Ribí. And,

[REDACTED]

Should this matter go to trial, Mr. King will certainly be a witness associated with his statements and knowledge [REDACTED]

[REDACTED]

The City Of Sun Valley Has A Well Established Policy On Employee Discipline

The City Of Sun Valley has established progressive discipline policies related to all employees, which includes Ms. Hammer, and has established policies requiring that employees against whom disciplinary actions are taken are to be provided with the right to due process to defend any and all allegations of misconduct.

Ms. Hammer has never been notified of any prior acts of misconduct, and she has been given exceptional reviews by yourself since she became the Sun Valley City Administrator in 2008. Ms. Hammer has been credentialed by the International City/County Manager's Association during her tenure with the City Of Sun Valley, verifying her dedication to the highest standards of ethical management, and has received the highest accolades from the Government Finance Officer's Association for both the City Of Sun Valley 2011 Budget and the City Of Sun Valley 2010 Audit, indicating Ms. Hammer's conformance with the highest standards of financial reporting, in direct contradiction to the claims asserted against her as to her purported financial mismanagement. Considering Ms. Hammer's exemplary performance and the failure of the City Of Sun Valley to bring any previous allegations of mismanagement against Ms. Hammer, there is certainly no basis for a dismissal of Ms. Hammer for cause based on purported violations of policies which had been approved by yourself.

As to the procedures being followed by the Sun Valley City Council related to Ms. Hammer's purported misconduct, Ms. Hammer is certainly entitled to 1) formal written notice of the charges being assessed against her, 2) disclosure of any and all documents which support the claims being made against her, and 3) a formal hearing on the charges being assessed against her at which time she is entitled to legal representation and the right to confront her accusers and bring forward witnesses and evidence in her defense. On information and belief, Former Sun Valley City Administrator Virginia Egger was provided with the same full due process rights when Mr. Ribí also brought misconduct allegations against her, and Ms. Hammer should be entitled to no less of due process protections.

Any Disciplinary Actions Against Ms. Hammer, Prior To A Full And Complete Confidential Investigation, The Confidential Filing Of Formal Charges And Confidential Formal Proceedings Will Be Considered A Purposeful Attack Upon Ms. Hammer's Otherwise Unblemished Professional Character

Please be placed on notice that any disciplinary actions taken by the City Of Sun Valley, including placing Ms. Hammer on administrative leave before Ms. Hammer is provided with written charges and until a full and complete due process procedure is followed, all of which must be done in total confidence, will be considered to be an action on behalf of the City Of Sun Valley (and in particular Mr. Ribí), to damage Ms. Hammer's otherwise stellar and unblemished professional character, and will result in Ms. Hammer seeking vindication of such. As has been described, Ms. Hammer has a long history of being recognized for her professional performance and ethical conduct by national professional organizations such as the International City/County Manager's Association and the Government Finance Officer's Association. Based on those accolades, Ms. Hammer should be given the benefit of the doubt as to her integrity and ethics.

As you are well aware, should you place Ms. Hammer on administrative leave, such action will be published in the Idaho Mountain Express. The effect of such public notice of the assertion that Ms. Hammer has done something improper will never be able to be adequately countered in the future even if such charges are later dismissed. There can be no doubt that Mr. Ribí's intentions of convincing you to put Ms. Hammer on administrative leave is a purposeful attempt on the part of Mr. Ribí to publicly besmirch Ms. Hammer's otherwise pristine reputation.

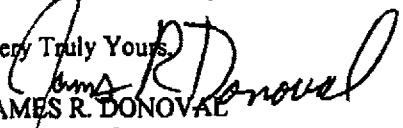
I implore you to avoid the inclination to place Ms. Hammer on administrative leave. As you are aware, Ms. Hammer has no authority to sign checks or for payroll – as that rests solely with you and Sun Valley City Clerk Kelly Eck (based upon presentation of request for payment of such to you by Sun Valley Finance Manager/Treasurer Michelle Frostenson). Thus, any assertion that Ms. Hammer could somehow act inappropriately with Sun Valley funds is impossible. And as you are also aware, you are personally in Sun Valley City Hall almost every day and will continue to have direct supervision over almost all activities of Ms. Hammer during an investigatory period. The weighing of the costs associated with Ms. Hammer's permanent loss of professional credibility should you place her on administrative leave, and the costs of the inevitable litigation that will follow, are clearly outweighed by your personal ability to control and approve all financial transactions of Sun Valley during an investigatory period.

Request For A Special Sun Valley City Council Executive Session

We are seeking that you call a Special Meeting and Executive Session of the Sun Valley City Council for Wednesday, November 16, 2011, and that you allow myself, Ms. Hammer, and recently elected Sun Valley City Council members Franz Suhadolnik and Michelle Griffith to attend such Executive Session. Based on the above described issues, we request that Mr. King be barred from attending such Executive Session (although we have no objection to another attorney being present to represent yourself and the City Of Sun Valley). By the end of the day Tuesday, November 15, 2011, we demand that we be provided with formal written charges of any wrongdoing that Ms. Hammer is being charged with and that we be provided with any and all documents associated with the allegations against Ms. Hammer for use in such Executive Session. At the November 16, 2011 Executive Session we expect to fully discuss any assertions made against Ms. Hammer and the allegations being asserted herein against Mr. Ribí, and we will be expecting that any and all assertions of wrongdoing against Ms. Hammer be dismissed at that time, with prejudice. Should the City Of Sun Valley choose to either not hold the Executive Session described above or to fully dismiss all allegations of mis-management or other wrong doing against Ms. Hammer, with prejudice, by Friday, November 18, 2011 – on Monday, November 21, 2011, we will file the aforementioned harassment claims against Mr. Ribí and the City Of Sun Valley in the Blaine County Court and let the litigation process, and the inevitable negative publicity to the City Of Sun Valley that will ensue, take its course. Any further disciplinary action taken by the City Of Sun Valley against Ms. Hammer thereafter will result in the addition of damage to reputation and retaliatory discharge claims against Mr. Ribí and the City Of Sun Valley.

Obviously, this is not the stable transfer of administrations and the retaining of the quality professional employees that both you and Mayor-Elect Briscoe have publicly promised, nor can Mayor-Elect Briscoe possibly be satisfied that his new administration will commence with such acrimony. However, should Mr. Ribí's vindictive intentions against Ms. Hammer be the controlling focus of the Sun Valley City Council, inevitably the next few months, or years, will be dominated by attention being paid to Mr. Ribí's emotional illness and continued abuse of City Of Sun Valley employees rather than all of the high quality improvements that Ms. Hammer and the other highly skilled City Of Sun Valley employees have brought and will continue to bring to the City Of Sun Valley.

Very Truly Yours,


JAMES R. DONOVAN
Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
N. Ribí
R. Youngman
F. Suhadolnik
M. Griffith

JAMES R. DONOVAL

Attorney

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STRICTLY CONFIDENTIAL
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In Contemplation Of Litigation

November 15, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – Allegations Of Misconduct
Continued Demand For Total Confidentiality

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the generic oral allegations of misconduct being made by Nils Ribi against Ms. Hammer and the allegations of on-going and extensive harassment which Ms. Hammer has made against Mr. Ribi.


It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested regarding the misconduct allegations being made against Ms. Hammer as well as the extensive harassment allegations Ms. Hammer has made against Mr. Ribi. However, instead, Ms. Hammer was told by yourself that the City Of Sun Valley will be appointing an independent party to conduct an investigation of all misconduct. I applaud your decision to investigate all allegations being made by Mr. Ribi against Ms. Hammer. We request and expect that the independent party will also perform a complete investigation into the serious allegations of harassment that Ms. Hammer has made against Mr. Ribi as part of the process, as well as Mr. Ribi's continued violation of Section 3.2 of Sun Valley Policies And Procedures related to Mr. Ribi's improper directives to Sun Valley employees and Mr. Ribi's intrusion into the day to day operations of the City Of Sun Valley. Ms. Hammer will cooperate with the investigation, will fully disclose any facts and documents being requested by the investigator and will discuss with the investigator and yourself any issues related to the investigation.

I want to reiterate our demand that any and all matters related to the investigation, any charges being made against Ms. Hammer and any meetings or hearings with or before yourself and the Sun Valley City Council remain highly confidential. As you have been made aware, we believe that Mr. Ribi's intent

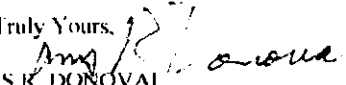
is to somehow publicly besmirch Ms. Hammer's reputation in retaliation for Ms. Hammer having disclosed and filed multiple and on-going harassment assertions against Mr. Ribi, and that the investigation against Ms. Hammer is nothing more than a sham "witch hunt" against Ms. Hammer by Mr. Ribi. I want to reiterate in the strongest terms possible that should any public disclosure be made of any allegations against Ms. Hammer of any sort, any public disclosure be made of the investigation being performed or any public disclosure be made of the proceedings that may be brought against Ms. Hammer, Ms. Hammer will consider Mr. Ribi and the City Of Sun Valley to have violated Ms. Hammer's due process rights and will prosecute Mr. Ribi and the City Of Sun Valley to the maximum extent allowed by law for both retaliatory discharge for bringing harassment claims against Mr. Ribi and for damage to Ms. Hammer's reputation.

In addition, I want to applaud your decision not to place Ms. Hammer on administrative leave until such time as the investigation and any formal proceedings against Ms. Hammer have been completed. As previously noted, you and City Clerk Kelly Eck sign all checks and for all payments out of City Of Sun Valley funds and you are personally in Sun Valley City Hall every day to monitor Ms. Hammer (in the office next door to yours) and the on-going activities of the City Of Sun Valley, thus there is no chance for Ms. Hammer to perform any acts of misconduct without your knowledge. As I have previously explained, the mere act of placing Ms. Hammer on administrative leave, for any reason, will of itself be an act of defaming Ms. Hammer for which there will never be satisfactory repair. It is evident that Mr. Ribi's intent is to damage Ms. Hammer's reputation in any way possible in retaliation for Ms. Hammer's claims for harassment against Mr. Ribi. I want to reiterate that we would consider any act of preemptive discipline such as putting Ms. Hammer on any form of leave, to also be an act of retribution for Ms. Hammer's harassment claims against Mr. Ribi and will also prosecute Mr. Ribi and the City Of Sun Valley for such action for retaliatory discharge and for damages to the fullest extent of the law.

Finally, thus far Mr. Ribi, and in some ways the City Of Sun Valley, has handled this entire matter in an extremely unprofessional manner, and in some ways already in violation of Ms. Hammer's due process rights. Last Friday, you and City Attorney Adam King were directed by Mr. Ribi and other Sun Valley City Council members to extend an offer of resignation to Ms. Hammer without any formal written charges having been provided to her and without any written evidence being produced to her. I would ask that should Ms. Hammer be accused of any misconduct violations, that Mr. Ribi and the City Of Sun Valley "cite its source" by providing Ms. Hammer with the specific Idaho statute, Sun Valley Municipal Code Section, Sun Valley Policy And Procedure section or other specific act or document which supports the allegations made against Ms. Hammer. Considering that we have clearly described Mr. Ribi's acts thus far as nothing more than a "witch hunt" in retaliation for the harassment claims made by Ms. Hammer against Mr. Ribi, and Mr. Ribi's long history of unsupported claims that he somehow has expertise in law and other municipal related matters, we hope that the City Of Sun Valley stands up for the highest standards of due process and ensures that Mr. Ribi's allegations of any type against Ms. Hammer are supported by actual established written legal precedent.



Very Truly Yours,


JAMES R. DONOVAL

Attorney At Law

cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
E. Sultadonnik
M. Griffith
S. Ribi

JAMES R. DONOVAL

Attorney

**4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com**

**STRICTLY CONFIDENTIAL
Not For Public Distribution
In Contemplation Of Litigation**

November 16, 2011

Hon. Wayne Willich
Sun Valley City Hall
Sun Valley, ID 83353

Re: Sharon R. Hammer – City Of Sun Valley - Nils Ribi: Harassment Settlement

Mayor Willich:

As you are aware, on November 13, 2011, I served upon yourself and all current and about to be seated Sun Valley City Council members a letter seeking that you call a Special Sun Valley City Council meeting and Executive Session for November 16, 2011 to discuss the issues detailed in the letter related to Mr. Ribi's on-going harassment of Ms. Hammer. As I stated, Ms. Hammer had chosen not to previously proceed against Mr. Ribi for violation of the City Of Sun Valley harassment policies because of your personal promise that you had discussed the matter with Mr. Ribi and because of your personal promise that the City Of Sun Valley would take actions to protect Ms. Hammer from any further inappropriate behavior on the part of Mr. Ribi. It is apparent that due to the recent change of administration, Mr. Ribi now considers himself to be free to continue his prior history of abuse and harassment of Ms. Hammer.

It is my understanding that for undisclosed reasons discussed in a Sun Valley City Council Executive Session on Monday, November 14, 2011, that the City Of Sun Valley will not call the Special Meeting and Executive Session I requested to confront Mr. Ribi regarding his harassment of Ms. Hammer, nor is there any suggestion that the City Of Sun Valley intends to take action against Mr. Ribi or enter into any resolution to the allegations made against Mr. Ribi by Ms. Hammer.

In the previous letter, I clearly described that if all matters related to Mr. Ribi's harassment of Ms. Hammer were not fully resolved by Friday, November 18, 2011, that I would be filing a harassment law suit against Mr. Ribi and the City Of Sun Valley on November 21, 2011. In addition, as was made very clear in the letter, the failure to call the Special Meeting and

I had previously urged to you to investigate the allegations against Mr. Ribí regarding Mr. Ribí's violations of the Section 3.2, Section 7.4 and Section 7.5 of the Sun Valley Policies And Procedures (related to Mr. Ribí's improper directives towards Ms. Hammer and Sun Valley employees, Mr. Ribí's seeking and obtaining of confidential Sun Valley and Sun Valley employee information and Mr. Ribí's harassment of Ms. Hammer). You and the Sun Valley City Council should take note that Mr. Ribí was the only member of the Sun Valley City Council voting against your request for an independent investigation at the Monday, November 14, 2011 Sun Valley City Council meeting, evidencing Mr. Ribí's intent to avoid having to face these serious allegations regarding his own conduct. Now, since that meeting, we have been informed that Mr. Ribí continues to contact Sun Valley employees seeking confidential information regarding matters related to Ms. Hammer, in direct violation of both Section 3.2 and Section 7.4 of the Sun Valley Policies And Procedures, and even though you directed that an independent investigation of all matters is going to be performed.

We applaud your conducting of an internal investigation. However, due to the serious nature of the harassment claims being made by Ms. Hammer, and to disclose Mr. Ribí's abhorrent conduct and seek to protect not only Ms. Hammer but Sun Valley employees and the general public from Mr. Ribí, I still fully intend to file the mentioned harassment suit on behalf of Ms. Hammer on Monday, November 21, 2011 as previously discussed. As you are aware, that law suit will be a completely public proceeding and all allegations against Mr. Ribí and the City Of Sun Valley and any and all actions and findings related to Mr. Ribí and the City Of Sun Valley after the filing of such law suit will be public record. Please be advised that on behalf of Ms. Hammer, that in order to avoid such action, we are offering the following terms of settlement related to all allegations made by Ms. Hammer against Mr. Ribí and the City Of Sun Valley in order to prevent the filing of the aforementioned harassment law suit:

- a) Mr. Ribí will resign from the Sun Valley City Council for "personal reasons" effective the day after Mayor-Elect Briscoe is sworn in as Mayor Of Sun Valley. This will allow Mayor-Elect Briscoe to name Mr. Ribí's replacement;
- b) The City Of Sun Valley will pay Ms. Hammer the sum of one hundred thousand dollars (\$100,000.00) in settlement of all harassment claims Ms. Hammer may have against Mr. Ribí and/or the City Of Sun Valley;
- c) Mr. Ribí will agree to never contact Ms. Hammer in any form. Mr. Ribí will also agree that should he ever contact Ms. Hammer again that Ms. Hammer will be entitled to further proceed against him personally for liquidated and punitive damages in the sum of an additional one hundred thousand dollars (\$100,000.00) for further harassment and breach of his no-contact agreement.

We would still be willing to sit with the Sun Valley City Council in Executive Session, including with recently elected Sun Valley City Council members Michelle Griffith and Franz Suhadolnik and discuss the matter. However, should I not be provided written confirmation that

all terms described herein have been accepted by the City Of Sun Valley and Mr. Ribí by 12:00 p.m. (noon) Friday November 18, 2011, or that some other amicable settlement has been accepted by Ms. Hammer or is being negotiated - on Monday November 21, 2011, on behalf of Ms. Hammer I will file in the Blaine County Court the harassment and intentional infliction of emotional distress action previously described against Mr. Ribí and the City Of Sun Valley. The law suit will detail all acts of Mr. Ribí in harassing Ms. Hammer, [REDACTED]

[REDACTED] I have attached a courtesy draft copy of the Verified Complaint that we propose will be filed on Monday, November 21, 2011, so that you may understand the serious nature of the claims being made by Ms. Hammer against Mr. Ribí and the City Of Sun Valley.

[REDACTED] And, there is no question that had any other employee of the City Of Sun Valley performed the various acts of verbal, mental and threatened physical abuse that Mr. Ribí has done over the course of at least the last three (3) years that such employee would have been severely disciplined or terminated from their employment position. Mr. Ribí should be treated no differently. As has been evidenced by recent allegations regarding Penn State University, public officials and employees have an unquestionable duty to make the public aware of any allegations related to a public official's acts endangering the safety of individuals and to seek immediate removal of such officials and report such acts to appropriate authorities. [REDACTED]

[REDACTED] Should Mr. Ribí not resign as suggested, and subsequently perform any further acts of impropriety or injury to City Of Sun Valley employees, and in particular to Ms. Hammer, [REDACTED] it is certainly now the City Of Sun Valley and the individual members of the Sun Valley City Council who will be held responsible.

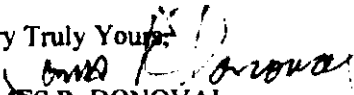
The Sun Valley City Council has no authority to force Mr. Ribí's resignation. However, Idaho State Statute 19-4101 provides for the removal of a public officer, after trial by the local county prosecutor, for actions of willful misconduct. Should Mr. Ribí refuse to resign, in order to protect City Of Sun Valley employees, in particular Ms. Hammer, and the public in general, I, and Ms. Hammer, believe that you, and the remaining Sun Valley City Council members are obligated to forward to Blaine County Prosecutor Jim J. Thomas a request to seek removal of Mr. Ribí from his position as a Sun Valley City Council member for acts of willful misconduct related to the harassment of Ms. Hammer in violation of Section 7.5 of the Sun Valley Policies And Procedures. In addition, as is detailed in the Verified Complaint, Mr. Ribí's multiple violations of both Section 3.2 (related to authority to direct Sun Valley employees) and Section 7.4 (related to disclosure of confidential Sun Valley and Sun Valley employee information) of the Sun Valley Policies And Procedures should also subject Mr. Ribí to removal from office pursuant to Idaho Statute 19-4101 for additional and separate willful misconduct by Mr. Ribí.

If the City Of Sun Valley and the individual members of the Sun Valley City Council do not either obtain Mr. Ribí's resignation or seek prosecution of Mr. Ribí for willful misconduct, please be on notice that the City Of Sun Valley and the individual members of the Sun Valley City Council will bear responsibility for any future actions of impropriety or misconduct on the part of Mr. Ribí and any physical or emotional injury Mr. Ribí subsequently causes.

Please note that upon the filing of the harassment law suit against the City Of Sun Valley and Mr. Ribí, the Verified Complaint and this letter will be disclosed to the public, including that both will be provided to the Idaho Mountain Express, the Times-News and the Idaho Statesman for publication, in an effort for the public to take notice of Mr. Ribí's potential danger to Ms. Hammer, City Of Sun Valley employees, and the general public, and to disclose the failure of the City Of Sun Valley to take any actions to protect such individuals from further potential harassment, threats and physical harm from Mr. Ribí.

On a personal note, Ms. Hammer wishes to thank you for all of your efforts in seeking to ensure that Ms. Hammer has been protected from Mr. Ribí and his insults, abuses, misconduct and attacks during your term as Mayor. As has been stated, Ms. Hammer has refrained from seeking the legal recourse she is certainly entitled to against Mr. Ribí based in large part on your personal promises and integrity. However, with the impending change of administration and that Mr. Ribí has now made clear that somehow he is "in charge" and "things will be done differently", Ms. Hammer has no other recourse to protect herself and other Sun Valley employees but to bring the harassment action, unless Mr. Ribí resigns.

Very Truly Yours,


JAMES R. DONOVAL
Attorney At Law

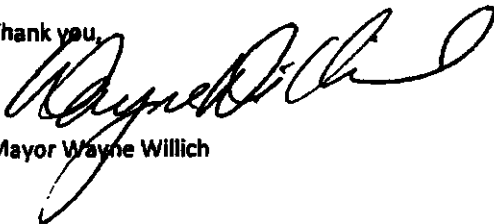
cc: S. Hammer
J. Lamb
D. Briscoe
R. Youngman
F. Suhadolnik
M. Griffith
N. Ribí

November 18, 2011

Dear Sharon:

Effective immediately you are being placed on paid administrative leave until further notice from your position as City Administrator and paid on-call firefighter/EMT. Please deliver all City of Sun Valley property in your possession to City Hall immediately, including but not limited to cell phones, keys, iPads, computers, computer files/computerized records, papers, telephones, pagers, fire equipment, EMT equipment, and any other property in your possession which belongs to the City of Sun Valley. This is not a disciplinary action.

Thank you,

A handwritten signature in black ink, appearing to read "Wayne Willich", is written over the typed name.

Mayor Wayne Willich

EXHIBIT F
(FILED SEPARATELY UNDER SEAL)

EXHIBIT J 950

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Wayne Willich
DATE: December 16, 2011
RE: **NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY CONTINUED ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, **you are directed** not to perform any of the duties of your employment other than those necessary to preserve the City's interests in your absence. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. **This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.**

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment, as set forth in the Notice of Administration served on you as well.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or

application (however characterized) or remove any documents or other City property (excluding only your personal effects unconnected with City operations) from any City facility.

You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences.

In the event the investigation indicates personnel action is warranted, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.


DATED this 16th day of December 2011.



Wayne Willich
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this ~~16~~¹⁷ day of December, 2011.



Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Wayne Willich, Mayor
DATE: December 16, 2011
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. **Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.**

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. **You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.**

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated this 16th Day of December, 2011:


Wayne Willich, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via U.S. Mail to Attorney James Donoval, counsel for Sharon Hammer on this 16th day of December, 2011.


Signature

I, Mayor Wayne Willich, do hereby authorize Kirtlan G. Naylor of the law firm Naylor & Hales, P.C. to notify the Blaine County Prosecuting Attorney with regard to the information and facts discovered in an employment investigation that may be the subject of criminal conduct.



Wayne Willich

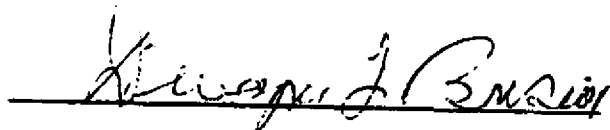
12/16/2011
Dated

EXHIBIT I

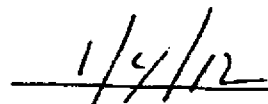
SV 342

EXHIBIT J 955

I, Mayor Dewayne Briscoe, do hereby authorize Kirtlan G. Naylor of the law firm Naylor & Hales, P.C. to notify the Blaine County Prosecuting Attorney with regard to the information and facts discovered in an employment investigation that may be the subject of criminal conduct.



Dewayne Briscoe



Dated

EXHIBIT J

SV 343

EXHIBIT J

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Dewayne Briscoe
DATE: January 4, 2012
RE: **NOTICE OF PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot at this time provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, you are directed not to perform any of the duties of your employment. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or application (however characterized) or remove any documents or other City property (excluding

only your personal effects unconnected with City operations) from any City facility. Further, if you have any records, documents, or other papers (in any format, including electronic or paper) in your possession, that are City records or public records, which you have not received in your possession pursuant to a duly authorized public records request, you are to return all such to the City immediately. You are to also immediately return to the City all keys, credit cards, equipment, including fire department equipment, computers, laptops, iPads, and any and all things owned by the City in your control or possession. Retention of any such documents and things is not acceptable.

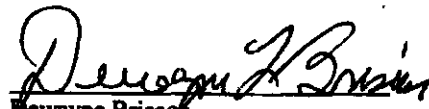
You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences, including the forfeiture of continued pay or termination.

In the event the investigation indicates personnel action is warranted for your conduct or for cause, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

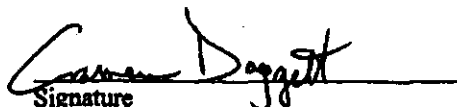
Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

DATED this 4th day of January, 2012.


Dewayne Briscoe
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered by hand delivery to Sharon Hammer on this 5th day of January, 2012.


Signature

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Dewayne Briscoe, Mayor
DATE: January 4, 2012
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.

NOTICE OF ADMINISTRATIVE INVESTIGATION - 1

EXHIBIT L

SV 346

EXHIBIT J 959

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

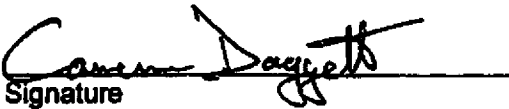
If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated January 4, 2012.


Dewayne Briscoe, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via hand-delivery to Sharon Hammer on this 5th day of January, 2012.


Signature



PRESS RELEASE JANUARY 16, 2012

CITY OF SUN VALLEY

The day after a contested court hearing, including motions to stop Plaintiff's harassing discovery requests and sanction Attorney James Donoval, Sharon Hammer voluntarily dismissed her lawsuit against the City of Sun Valley, Councilman Nils Ribi, City Attorney Adam King and Councilman Robert Youngman. Ms. Hammer's two other lawsuits against the City of Sun Valley are still active.

City of Sun Valley officials are glad to see that this unfounded lawsuit has been dismissed. While their counsel, Kirtian Naylor, communicated all settlement offers by Ms. Hammer to the City, this resolution of a voluntary dismissal by Hammer is the appropriate action.

At no time did the City's insurer, ICRMP, threaten that legal counsel or insurance coverage for the City was in jeopardy, contrary to allegations by Hammer.

Mr. Naylor stated in court at the hearing, held January 11, that the City's investigative report, which has been the subject of much discussion in the news and court filings, has been turned over to the Blaine County Prosecuting Attorney for an independent review of possible criminal conduct. For that reason, it cannot be released for public consideration at this time.

The City of Sun Valley appreciates the patience of its citizens as appropriate steps are taken in this matter. Mayor Briscoe is committed to ensuring a strong and effective administration to conduct the business of the City. The dismissal of this lawsuit will allow the administration to now focus on the governing of the City and providing appropriate services to the citizens of Sun Valley.

P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438 • FAX 208-622-3401
www.sunvalley.gov/office.com

EXHIBIT M

SH-TIMELINE 000618

EXHIBIT J 961

**COUNCIL MEETING MINUTES
OF THE MAYOR AND CITY COUNCIL'S OF KETCHUM AND SUN VALLEY
IN THE COUNCIL CHAMBERS - 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
JANUARY 19, 2012 1:00 P.M.**

ORIGINAL

The Mayor's and the City Council's of Sun Valley and Ketchum, Blaine County, State of Idaho, met in a Joint Council Meeting in the Sun Valley City Hall Council Chambers on January 19, 2012 1:00 p.m.

**CALL TO ORDER
ROLL CALL
CITY OF KETCHUM**

PRESENT: Mayor Randy Hall, Council member Baird Gourlay.

ABSENT: Council member Larry Helzel, Council member Nina Jonas, Council member Curtis Kemp.
The City of Ketchum did not have a quorum.

**ROLL CALL
CITY OF SUN VALLEY**

PRESENT: Mayor Dewayne Briscoe, Council President Bob Youngman, Council member Nils Ribi.
Council member Michelle Griffith and Council member Franz Suhadolnik.

ABSENT: None

PLEDGE OF ALLEGIANCE
Ketchum Mayor Randy Hall led the Pledge of Allegiance.

MAYOR COMMENT
Mayor Briscoe made comments.

PUBLIC COMMENT
Members of the public made comment.

Sun Valley Marketing Alliance (SVMA) Quarterly Report
Arlene Schieven gave a report/update on the Sun Valley Marketing Alliance.
Council President Bob Youngman made comments.
Arlene Schieven responded to questions from Bob Youngman.
Ketchum Mayor Randy Hall made comments.
City of Ketchum Council member Baird Gourlay made comments.
Council members Franz Suhadolnik and Nils Ribi made comments.

Sustain Blaine Project Proposal - Purchase of Remote Polling Devices
Harry Griffith and Joys Kasputys of Sustain Blaine gave a presentation.
Council member Michelle Griffith recused herself, due to a potential conflict of interest.
Council members made comments.
Ketchum Mayor Randy Hall made comments.
City of Ketchum Community Development Director Lisa Horowitz made comments.
Ketchum Council member Baird Gourlay made comments.

JOINT PORTION OF MEETING WITH CITY OF KETCHUM ENDED AT 1:50 P.M.

Idaho Power Presentation
Dan Olmstead with Idaho Power introduced the team that has been working together on this project. Overall Project Manager Tom Barber, Consultant Mike Pepper, Area Manager Bo Hanchee, Senior Planning Engineer Brian Hobson, Community Advisory Committee Lloyd Betts, Len Harlig and Nils Ribi. Olmstead stated Sun Valley Company Director of Resorts and Resort Development Wally Huffman also participated in the Idaho Power meetings.
Idaho Power Senior Planning Engineer Brian Hobson began the Presentation.
Council President Bob Youngman asked questions, to which Brian Hobson responded.
Council members Michelle Griffith and Franz Suhadolnik asked questions.

**RECESS
MOTION**

Council member Nils Ribi moved to enter into a 5 minutes recess, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Citizens Advisory Committee member Lynn Harlig commented on the Idaho Power presentation.

Amendment to Sun Valley Marketing Alliance Bylaws

City of Sun Valley representative on the Sun Valley Marketing Alliance Board Brooke Wojcik made comments.

Council member Franz Suhadolnik asked questions.

Council member Nils Ribi made comments.

Public Hearing- Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02

Community Development Director Mark Hofman gave a presentation.

Garth McClure with Benchmark Associates made comments.

Council member Nils Ribi asked questions.

City attorney Adam King made comments.

MOTION

Council member Michelle Griffith moved to waive the 3 readings of Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Ordinance 441 Sun Valley Company Lot 28A Rezone No. ZMA 2011-02

MOTION

Council member Nils Ribi moved to adopt Ordinance 441 White Clouds Lot 28A Zoning map Amendment as presented, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Public Hearing- Sun Valley Company Parcel E Plat Amendment Application No. SUBPA 2011-03

Community Development Director Mark Hofman and City Attorney Adam King made comments.

MOTION

Council member Nils Ribi moved to adopt Plat Amendment Lot 28A and Parcel E White Clouds Corrected Subdivision, 100 and 200 Sun Peak Drive, Application No. SUBPA 2011-03 Findings of Fact Conclusions of Law as presented, seconded by Council President Bob Youngman.

AYES: Council member Nils Ribi, Council member Michelle Griffith, Council President Bob Youngman and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Trimper Preliminary Plat Application No. SUBPP 2011-02

Community Development Director Mark Hofman gave a presentation.

Garth McClure with Benchmark Associates made comments.

MOTION

Council member Franz Suhadolnik moved to approve Findings of Fact, Conclusions of Law, Decisions and Conditions of Approval, Land Subdivision Trimper Lot, Split Lot 26A, Dollar Mountain Subdivision, Preliminary Plat Application No. SUBPP 2011-02, seconded by Council President Bob Youngman.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Police Vehicle and Equipment Dispersal

Police Chief Cam Daggett made comments.

Mayor Dewayne Briscoe authorized the transfer of property to the City of Bellevue.

Council Liaison Assignments

Mayor and Council discussed liaison appointments and assignments.

MOTION

Council member Michelle Griffith moved to approve the entire slate as suggested by the Mayor of Council Liaison appointments and assignments, seconded by Council member Nils Ribi.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Council Priorities

Council member Michelle Griffith made comments.

Council President Bob Youngman made comments.

Mayor Briscoe stated Council Priorities will be revisited at the March 15 Council meeting. Council members will be reminded to review the spreadsheet on March 5th, 2012 and to submit any desired revisions to the Mayor promptly.

Ochi Art Installation on Festival Meadows

Pauli Ochi of Ochi Gallery made comments regarding the art installation.

Council members Michelle Griffith and Nils Ribi made comments.

Year End Financial Report FY 11

City Treasurer Michelle Frostenson made comments.

City Attorney Adam King made comments.

Council member Nils Ribi asked questions.

Financials

Council member Franz Suhadolnik made comments.

Council President Bob Youngman made comments.

Mayor Briscoe asked Council for consensus to move the Executive Session on the agenda between items 12 and 12a, to which they agreed unanimously.

Council Minutes November 17, December 2, 15, 2011.

Council member Nils Ribi directed changes to the November 17, 2011 Minutes.

MOTION

Council member Nils Ribi moved to approve the Minutes of November 17 with the changes directed, approve the Minutes of December 2 and 15, 2011, receive and file the November and December paid invoice reports, receive and file the November and December Financial reports, and authorize payment of bills and payroll for February 2012, when due, seconded by Council member Michelle Griffith.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

Willow Creek Ponds

Council member Franz Suhadolnik made comments

MOTION

Council member Franz Suhadolnik moved to postpone definitely to date certain February 16, 2012 Agenda Item "Willow Creek Ponds", seconded by Council member Nils Ribi.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

EXECUTIVE SESSION Pursuant to Idaho Code 67-2345 1 (b, d, f,) b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code; f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

MOTION

Council President Bob Youngman moved to enter into Executive Session, pursuant to Idaho Code 67-2345 1 (b, d, f), seconded by Council member Franz Suhadolnik.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik

NAYES: None

The Mayor declared the motion approved.

Executive Session began at 4:04 p.m.

Executive Session ended at 5:25 p.m

City Administrator Contract

Mayor Briscoe announced "I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration."

MOTION

Council member Franz Suhadolnik moved to approve the termination of City Administrator Sharon Hammer's Employment Contract, seconded by Council member Michelle Griffith.

AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the motion approved.

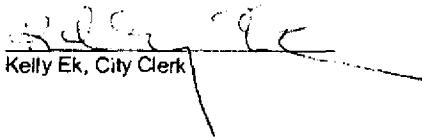
**ADJOURNMENT
MOTION**

Council member Nils Ribi moved to adjourn, seconded by Council member Michelle Griffith.

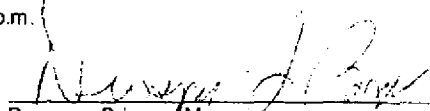
AYES: Council President Bob Youngman, Council member Nils Ribi, Council member Michelle Griffith and Council member Franz Suhadolnik.

NAYES: None

The Mayor declared the meeting adjourned at 5:30 p.m.



Kelly Ek, City Clerk



Dewayne Briscoe, Mayor



**City of Sun Valley City Administrator
Sharon Hammer Terminated**

Statement to City Council January 19 by Mayor Briscoe

"I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration." The City Council, by unanimous vote (4-0) confirmed the action recommended, and directed Mayor Briscoe to take such action as authorized by the employment agreement.

**P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438
FAX 208-622-3401 www.sunvalley.govoffice.com**

EXHIBIT O

**EX F
HAMMER 000327**

EXHIBIT J 967



August 23, 2012

Mr. C. Clayton Gill
Moffatt Thomas Barrett Rock & Fields, CHTD
U.S. Bank Plaza
101 S. Capital Blvd. 10th Floor
Boise, Idaho 83702-7710

Re: City of Sun Valley Forensic Investigation

Dear Mr. Gill:

Moffatt Thomas Barrett Rock & Fields, CHTD ("Moffatt Thomas"), on behalf of its client the City of Sun Valley ("City"), engaged Hagen Streiff Newton & Oshiro, Accountants P.C., Certified Public Accountants ("HSNO") to perform a forensic audit of each of the departments of the City. Specifically, we investigated the: (1) Administration Department; (2) Building Department; (3) Community Development Department; (4) Fire Department; (5) Police Department; and (6) Street Department.

SCOPE

The scope of our investigation was limited to include the following topical areas:

- (1) Usage of City-issued credit cards and fuel cards for any improper purposes, including accuracy and adequacy of documentation supporting usage of City-issued credit cards and fuel cards;
- (2) Accuracy of hours reported to payroll for non-exempt employees or others paid on an hourly basis, including accuracy and adequacy of back-up documentation supporting compensable hours reported for those individuals;
- (3) Accuracy of hours reported to payroll for exempt salaried employees doing work for other departments on an hourly pay basis, including accuracy and adequacy of back-up documentation supporting compensable hours reported for those individuals;
- (4) Accuracy of vacation hours claimed by employees, with special emphasis on accuracy of vacation hours reported by employees who cashed in unused vacation hours, including accuracy and adequacy of back-up documentation supporting vacation hours taken by employees;
- (5) Any misappropriation or improper usage of City property;
- (6) Accuracy of payments made to employees or other individuals for reimbursement of expenses related to travel, training, or entertainment, including accuracy and adequacy of documentation supporting any claim for reimbursement; and

Atlanta, Boston, Chicago, Dallas, Emeryville, Jersey City, Los Angeles, Miami, New York, Newport Beach,
Providence, Sacramento, Salt Lake City, San Francisco, Seattle, Stamford, Washington, D.C.

1325 4th Avenue, Suite 1730 | Seattle, 98101 | Phone: (206) 447-3338 | Fax: (206) 447-3007 | Web: www.hsno.com

EXHIBIT P

SV 2718
EXHIBIT J 968

Mr. Clay Gill
August 23, 2012

(7) Any evidence supporting any improper business dealings between the City and any person that is related to a City employee by blood-marriage within the second degree.

The review period for our investigation of the topics listed above was 2009 through 2011.

Our review, investigation and analysis included a review of the records and information provided by the City of Sun Valley, Idaho, to us at our request. We relied on the accuracy of the documents, records and information provided to us.

As part of the scope of our investigation, we performed various analytical procedures on the information provided to test the validity of the information provided, as we considered appropriate in the circumstances and within the scope of our assignment. The scope of our engagement did not include the investigation or determination as to the authenticity of documents, possibility of alteration of documents, completeness of all documents and records, or possibility of forgery of signatures on documents. Although we have performed a review, testing and analysis of the City's records, we have not audited the City's financial statements in accordance with generally accepted auditing standards. Therefore, we express no opinion on the data or documents supplied by the City. Our report is dependent on the accuracy of the information provided to us. However, with those limitations disclosed, and based solely upon our review of the documents and other data provided to us, the analytical procedures we performed, and interviews of those involved in the custody of the documents and other electronic information provided to us, we did not find any evidence of alterations or deletions to the documents or other electronic information provided to us.

This report is based on documents and information provided to us as of the date of our report. We will, if requested by the City of Sun Valley, continue to analyze any additional documents or other information that is provided to us subsequent to the issuance of this report and provide a supplemental report if necessary.

EXECUTIVE SUMMARY

This Executive Summary is intended to be a summary of the more detailed findings and conclusions set forth in the various exhibits and schedules to this report. The summary of our findings, conclusions and recommendations resulting from our forensic investigation are as follows:

I. General Financial Governance of the City of Sun Valley

The Idaho Code sets forth various statutes governing municipal city government agencies such as the City of Sun Valley. Chapter 10, Title 50 of the Idaho Code provides specific governance related to the City of Sun Valley's financial matters. Idaho Code Section 50-1017 provides, in part, that "All claims against the city shall be approved by the city council prior to the payment of such claims and the city council shall establish and maintain an adequate and reasonable system on internal accounting controls."

Idaho Code Section 50-208, Duties of Treasurer, provides, in part, "The treasurer of each city shall be the custodian of all moneys belonging to the city . . . render an account to the city council, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury; (s) he shall also accompany such accounts with a statement of all receipts and disbursements."

Mr. Clay Gill
August 23, 2012

A. Summary of Findings Regarding the General Financial Governance of the City of Sun Valley

Following is a summary of findings developed during our investigation.

1. Control and Approval of City of Sun Valley Disbursements

The process for the documentation and approval of expenditures by the City of Sun Valley in effect during the years 2009 through 2011 was intended to be as follows:

- The department head or other manager in the department would review documentation and approve appropriate expenditures by completing and signing an approval form summarizing each expenditure for that department (referred to as a yellow sheet). The department head or manager would attach to the yellow sheet any supporting documentation, such as invoices, credit card statements, receipts for each credit card charge, and fuel card statements.
- The Finance Manager/Treasurer would review documentation and account classification of the expenditure and general description of the expenditure category and complete any additional necessary information.
- The City Administrator would review and approve the expenditures by signing the yellow sheet.
- The yellow sheet and all documentation would then be presented to the Mayor for review and signature.
- A designated City Council member, on a rotating basis, would review and provide the final approval signature.
- The documents would then be returned to the Finance Manager/Treasurer for filing.
- The Treasurer periodically prepares a statement to the Council summarizing the expenses and the Council approves such expenditures.

2. Findings Regarding Control and Approval of City of Sun Valley Disbursements

Our review found that the intended process as described above was not complied with relating to certain expenditures, as follows:

- Adequate documentation and/or explanation of the reason for expenditures was not provided or presented by the department head in all cases, even though the department head signed their approval; for example, invoices and receipts were often times not provided for purchases made using a City-issued credit card, especially in the Fire Department.
- In some instances, the yellow sheet was not completed by the department head or the designated reviewing manager in the department, who was supposed to be the first sign-off approving the expenditure, but instead was prepared by the Finance Manager/Treasurer.
- The Finance Manager/Treasurer did not consistently, or in all situations, insist or follow up on expenditure requests that were not adequately documented. Additionally, the Finance Manager/Treasurer did not adequately or timely review and supervise the Fire Department payroll function to control and ensure that the on-call firefighters were accurately paid for actual hours worked and that the hours were properly documented.

Mr. Clay Gill
August 23, 2012

- The yellow sheet did not include, for some expenditures, the complete set of signatures of the department head or department manager, Finance Manager/Treasurer, City Administrator, Mayor, and the reviewing City Council member. For some expenditures, only one of the approval signatures was missing. In other instances, there were multiple missing signatures. The former City Administrator's husband claims that his wife's signature was forged onto some of the yellow sheets, which, if true, is another indication of failure to follow the review process. The multiple approval process was intended to provide control over the City's expenditures, however, the process and controls were not followed in all cases.
- For some periodic, reoccurring expenditures, prearranged automatic deductions were charged against the City of Sun Valley's credit cards or bank account before this approval process was complete.

B. Conclusion Regarding City of Sun Valley Disbursements

Based on our review of the documentation process for City of Sun Valley expenditures, the process in effect during the years 2009 through 2011 was not always followed, which resulted in inconsistent compliance with internal controls over expenditures. Additionally, during the course of the investigation we discovered that certain individuals responsible for reviewing and approving expenditures at the department level refused to sign off on the yellow sheets because they did not believe certain expenditures were appropriate or related to City of Sun Valley business. Notwithstanding, those expenditures were processed and approved for payment without sign-off by the department head or a department manager.

C. Recommendations Regarding Process for Approving City of Sun Valley Disbursements

The City should not allow payment for any expenditure prior to the completion of the review process. Thus, the City should suspend its practice of allowing its bank to pay off its credit card balance before the review process and suspend its practice of allowing some of its invoices to be automatically paid with the City credit card, unless the expenditures are preapproved by resolution of the Council. The City should provide for an alternative review process and allow some flexibility in its review policy to account for a situation where one of the reviewers is away from the office for an extended period of time.

II. Compensation of Employees

The City of Sun Valley Personnel Policies & Procedures Manual ("Personnel Manual") in effect during the years 2009 through 2011, as adopted by resolution of the Council, provides that the City Administrator is delegated with the authority to administer the policies set forth in the Personnel Manual and is responsible for periodically reviewing and recommending additions, deletions or amendments to the City's personnel policies to the Mayor and Council. See Sections 1.2 and 2.1 to the Personnel Manual. However, that grant of authority to the City Administrator is limited by other language in the Personnel Manual that states: "Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation."

Mr. Clay Gill
August 23, 2012

A. Lack of Controls Regarding City of Sun Valley Employee Work Schedules

1. Work Schedule, Attendance and Punctuality Policies

The Personnel Manual states that the normal work schedule is a 40-hour work week from 8:00 a.m. to 5:00 p.m.; however, the department heads, with City Administrator approval, retain the right to establish work schedules in order to best meet the needs of the City and the public. Employees are expected to be punctual and, if an employee regularly fails to arrive to work timely or leaves early, the employee will be subject to disciplinary action.

a. Findings regarding work schedules and attendance by salaried exempt employees

Our review and observations indicate that the City's stated normal work schedule was not consistently adhered to by some exempt employees. Department heads or supervisors were allowed to approve flexibility in work schedules. Additionally, there was a lack of consistent evidence of approval documentation of work schedule variances consistent with the Personnel Manual that allowed such variances, but only if they "meet the needs of the organization and the public." Rather, the work schedule variances appeared to have been taken by the exempt employees to accommodate their personal schedules by taking extended weekends and the like for out-of-town travel. In other instances, there appeared to be evidence justifying a variance in work schedules, such as after hour public meetings, city services dictated by emergency situations, and late night or early morning snow removal and road repairs, but these reasons were never documented as part of any formal process for allowing a variance in the effected employee's work schedule. Also, some employees worked from home rather than working at their City office.

We also found many instances in which exempt employees took compensatory time off during normal working hours (i.e., they were paid their normal salary even though they were out of the office and not claiming vacation during normal working hours), purportedly due to working more than 8 hours in a day or more than 40 hours in a work week. Many of these exempt employees who took compensatory time off claimed that they were working before or after regularly scheduled work hours and on weekends. In only one instance were we able to locate documentation authorizing compensatory time off for an exempt employee, which grant of compensatory time off is inconsistent with the Policy Manual that only authorized compensatory time off for non-exempt hourly employees (see Section 4.8.A.3). Further, a policy of compensatory time off for exempt employees who work more than 8 hours in a day or more than 40 hours a week is also inconsistent with other provisions of the Personnel Manual that state: "[i]t is anticipated that exempt Employees will work more than 2080 hours per year," that "Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so," and "Exempt Employees are not eligible for overtime compensation." We were also advised that the acting City Administrator and the acting Mayor orally approved flexible work schedules for some of the exempt employees. However, even if that was the case, those oral, unwritten policies were inconsistent with the above-quoted provisions of the Personnel Manual, which Personnel Manual states, at Section 1.2, that "Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation."

Mr. Clay Gill
August 23, 2012

Based upon the information we reviewed, we quantified the number of absences by exempt salaried employees during normal working hours without claiming vacation at 1,837 hours, with a value of \$88,161 based on the salaries paid to those exempt salaried employees.

b. Recommendations for Work Schedules and Attendance for Exempt Salaried Employees

In the early part of 2012, the City of Sun Valley implemented a leave policy that requires a City employee to notify his or her supervisor of any absence from the City during normal working hours. Further, we are advised that the City of Sun Valley is in the process of amending its Personnel Manual and including provisions that allow for various disciplinary actions to be taken against an exempt employee with unexcused absences. We would also recommend that the City, as a prudent practice of public accountability, document the reason for allowing any authorized variance in an exempt employee's work schedule, setting forth in writing the justification for the variance so as to comply with the City's Personnel Manual that only allows a variance in those instances that "meet the needs of the organization and the public."

B. Exempt Employees Being Paid Twice for Work Performed During Normal Working Hours

1. Findings

During the review period, certain City of Sun Valley salaried exempt employees also performed services for the City as on-call EMT firefighters. City of Sun Valley on-call EMT firefighters are paid for hours worked in response to emergency calls from the Blaine County emergency call center. We were told that exempt employees were not to be paid on an hourly basis for any EMT response that occurred during the City of Sun Valley's normal work hours, from 8:00 a.m. to 5:00 p.m., as those exempt employees were already paid a fixed salary for those hours. Our investigation, which included obtaining the exact time of EMT and fire calls from Blaine County, revealed that certain exempt employees were paid on an hourly basis for certain EMT and fire calls that occurred during normal work hours, which resulted in a double payment to those employees.

We quantified the number of double payments at 132 hours, or a total of \$2,243 in additional payments to those salaried, exempt employees.

2. Recommendations

Because exempt employees' primary responsibility is to complete their duties as described in their job descriptions as exempt employees during normal business hours, we would recommend that the City disallow the practice of allowing exempt employees to perform services as on-call EMT firefighters during normal working hours. This practice will not only prevent the issue of double payments to the exempt employees, but it will also help prevent issues related to ad-hoc variations in the work schedule of exempt employees. It is our understanding that this has been the practice of the City of Sun Valley since the early part of 2012.

Mr. Clay Gill
August 23, 2012

C. Exempt Employees Being Paid Salaries Inconsistent with the Personnel Manual

1. City Written Policies Regarding Administration of Salaries of City Employees

Section 4.6 of the Personnel Manual states: "The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan." Further, the Manual provides that a minimum and maximum salary is to be established for each job position in the City, excepting only the City Administrator and City Attorney positions. By resolution of the Council in February of 2007, the City adopted a salary plan for each job position in the City of Sun Valley, other than the City Administrator and City Attorney. That salary plan was based upon a study of salaries paid to individuals performing similar services to similar municipalities in comparable resort markets.

The Salary Plan adopted by resolution of the Council in February of 2007 set forth a minimum and maximum salary for each job position, and a nine step salary increase for each position. Further, the Personnel Manual provides that any changes in an employee's salary shall be consistent with the Salary Plan and based upon the results of periodic performance evaluations, which performance evaluations were to be conducted at least once a year. Any salary increase beyond the maximum salary set forth in the Salary Plan is only allowed when an employee reaches the final step nine of the salary plan and receives an excellent performance evaluation. Further, any pay increase beyond step nine is limited to an annual pay increase of 2.5%. Finally, the Personnel Manual states that the City Administrator was responsible for updating the Salary Plan in April of 2010, presumably to ensure that the salary ranges remained consistent with wages paid in comparable markets for employees performing similar duties.

2. Findings Regarding Administration of Salaries for Exempt Employees

During the review period, 2009-2011, the City did not follow the Salary Plan. Further, our investigation revealed that the City did away with employee performance reviews that were to be used in conjunction with the Salary Plan adopted by resolution of the Council. Rather than using the Salary Plan based upon annual performance reviews, the former Mayor and the former City Administrator used an ad-hoc subjective process for reviewing and adjusting salaries. This resulted in one instance of an employee being compensated more than \$15,061 above the maximum salary range established for that position under the Salary Plan approved by the Council. Further, our review discovered that that same City employee received two "merit" increases of \$5,000 within a four-month period, with no justification ever provided to us for the second "merit" increase. Presumably, these actions were taken by the then-acting City Administrator based upon language in the Personnel Manual that states: "The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds."

3. Recommendations for Administration of Salaries for Exempt Employees

The City apparently abandoned the Salary Plan that was based upon a market study of salaries in comparable resort markets for similar positions with similar duties for an ad-hoc subjective approach. This is not consistent with the concept of public accountability that should be the focus of any city administration. Additionally, if the City Administrator is allowed to deviate from the Salary Plan, his

Mr. Clay Gill
August 23, 2012

or her discretion should be limited to certain enumerated exceptions or subject to approval by the Council, which is by statute responsible for establishing and maintaining an adequate and reasonable system on internal accounting controls.

D. Wage and Hour Issues in the Fire Department

1. Findings regarding the hourly on-call EMT firefighters

The City's non-exempt hourly employees are paid for the compensable services they provide to the City and are eligible for overtime and compensatory time pursuant to applicable laws and as set forth in the Personnel Manual. Our findings found several issues relating to the compensation of on-call EMT firefighters who performed services for the City of Sun Valley.

During the review period, the City employed a number of on-call EMT firefighters. It was the expectation that these on-call EMT firefighters would be hired in a position that was intended as a second job and not a full-time position for the City of Sun Valley. To establish camaraderie amongst the firefighters, on-call EMT firefighters were encouraged to hang around the fire department, leading to some confusion as to what was and what was not compensable time as on-call EMT firefighter. For instance, we saw many firefighters requesting compensation for barbeques, and in other instances requesting compensation for seven hours for what appeared to be simple tasks such as clearing the Fire Chief's office. We also discovered that even though the on-call position was intended as a part-time job, two on-call EMT firefighters were paid for more than 1,300 hours in a year, subjecting the City to liability to the State of Idaho administered retirement plan, PERSI.

During the review period, the recording of compensable time for the on-call EMT firefighters was handled in this fashion: the fire department maintained a white board to record the names of those on-call EMT firefighters who responded to a call. Those names were subsequently transferred to a log sheet that identified the name of the on-call EMT firefighter and the length of time they spent responding to the call. This log sheet also recorded time for drills and special events, such as attendance at any concerts held at the Sun Valley amphitheater (which appeared to be the bulk of hours recorded by the on-call EMT firefighters during the summer months). The maintenance of the log and the recording of the data on the log was the responsibility of the person who was supposed to submit monthly payroll summaries to the Finance Manager/Treasurer. The on-call EMT firefighters were responsible for recording any additional time, i.e., compensable time beyond the time recorded on the log, on a separate time sheet. Then, on a monthly basis, the hours recorded on the log and the time cards were added up and summarized on a single sheet of paper. The Fire Chief would then review the summary sheet and the supporting log sheet and time cards to ensure the accuracy of the hours reported on the single payroll summary sheet. Following the review process by the Fire Chief, the single-page summary sheets were submitted to the Finance Manager/Treasurer.

In 2010, the City adopted an unwritten oral policy that attempted to restrict the on-call EMT firefighters to 80 hours of compensable time each month. Based upon our review of e-mails and witness interviews, this 80-hour rule was implemented with the hope of limiting the City's liability for contributions to the State of Idaho administered retirement plan, PERSI.

Our review of the single-page payroll summary sheets, log sheets, and time cards for the on-call EMT firefighters revealed the following:

Mr. Clay Gill
August 23, 2012

- (1) Some on-call EMT firefighters consistently recorded more hours than others for attendance at the same event, such as an EMT class or a backcountry-training course;
- (2) Some entries on the time cards lacked dates, a description of the activity performed by the firefighter, were illegible, and in several instances we were not able to find time cards for some of the extra hours reported on the single-page summary sheets submitted to the Finance Manager/Treasurer;
- (3) Once the 80-hour rule was implemented, those overseeing the fire department payroll would consistently write down the on-call EMT firefighters' hours to something below 80 hours on the monthly single-page payroll summary submitted to the Treasurer when the log and time cards for extra hours for that on-call EMT firefighter totaled something more than 80 hours.
- (4) Our review of the payroll reports further establishes that the 80-hour rule was administered starting in September 2010 by never paying the on-call EMT firefighters more than 80 hours a month and attempts to make some of the on-call EMT firefighters whole by compensating them for their extra hours in later months when they reported less than 80 hours.
- (5) The time periods for the fire department payroll were not consistent and in some cases extended over a period of six weeks.
- (6) The review process for the fire department payroll included review of time cards by family members and, in some cases, the reporting of extra hours for family members for which we could not find a corresponding time card.
- (7) One on-call firefighter's records that allegedly supported his claim for extra hours was allegedly taken from the fire department as a result of an alleged break-in at the Elkhorn fire station in February of 2012.

2. Conclusions regarding wage and hour issues in the fire department

The log sheets and extra time cards used to calculate the compensable hours for the on-call E.M.T firefighters do not always accurately reflect the time identified on the single-sheet payroll reports prepared by the fire department and submitted to the Finance Manager/Treasurer. Further, the single-sheet payroll reports prepared by the fire department and submitted to the Finance Manager/Treasurer do not always match the payments identified on the City's electronic payroll reports that we reviewed. It is our opinion that those involved in payroll for the fire department attempted to comply with the unwritten 80-hour rule by writing off any time for an on-call FMT firefighter that exceeded 80 hours for that monthly payroll period, and attempted where possible to make that firefighter whole by paying them for the written-off hours in later months, when they reported something less than 80 hours.

3. Recommendations regarding wage and hour issues in the fire department

The City should clearly define what are compensable tasks by an on-call EMT firefighter. In 2012, the City prepared and distributed a written document that describes the duties of an on-call EMT firefighter. This should be supplemented with written instructions to the on-call EMT firefighters that explain what is and is not compensable time, as well as instructions on the detail to be provided in their time sheets to properly determine if the time they have recorded is compensable time. Family members should not be allowed to review and approve the hourly time sheets submitted by another family member. Wages should not be withheld or delayed to comply with any internal rule, such as the 80-hour rule. Our review reflected that there were twenty or more on-call EMT firefighters available at any given time, with some reporting only a few hours each month and others exceeding

Mr. Clay Gill
August 23, 2012

eighty hours. It would appear that the City could better manage the 80-hour rule by better distributing the work amongst the pool of available on-call EMT firefighters, informing the on-call firefighters that they are not authorized to work more than 80 hours each pay period, and disciplining any on-call EMT firefighter who reports more than 80 hours a month, after compensating that on-call representative for any compensable time they submitted for that pay period.

Our review indicates that in 2012 the City implemented new measures that define the fire department's payroll period in advance and ensure that the pay periods for the fire department are at least once a month.

E. Non-Compliance with the City's Accrued Vacation Hour Policies

1. Summary of the City's Vacation Policies During the Review Period (2009-2011)

The Personnel Manual provides employees with a number of days of vacation depending on years of service to the City.

The Personnel Manual further states that employees may accrue a maximum of 100 hours of vacation leave and the employee will cease accruing vacation leave until his/her accrual balance falls below 100 hours. Three employees, by agreement, were allowed to accrue up to 200 hours of vacation, with the provision that such employees will cease accruing vacation leave until his/her accrual balance falls below 200 hours.

Employees, with approval of the City Administrator, may convert up to 40 hours of vacation to a cash payment each year, provided that the employee has used an equal amount of vacation leave in the previous 12 months.

Vacation leave must be scheduled and approved in advance with the respective department head.

2. Findings Regarding the City's Vacation Policies During the Review Period

There were many violations of this section of the City policy during the review period:

- There was no formal system used to request and approve vacation leave.
- The City was not in compliance with the City's maximum vacation accrual policy during the years 2009 through 2011. A significant number of employees' vacation accrual hours were allowed to exceed the maximum allowed. The City did not properly cease accruing vacation hours when the accrual reached 100 hours or 200 hours, depending on the applicable employee.
- Some employees did not take or report the minimum of 80 hours per year, and the vacation policy variances were not properly documented as approved.
- Some employees reported vacation hours in excess of the number of hours allowed annually, and variances were not properly documented.
- Certain employees received cash payments for vacation hours despite not taking the required number of leave hours before qualifying for a "cash-out."

Mr. Clay Gill
August 23, 2012

- As discussed previously, some employees appeared to be out of the office on vacation without claiming vacation or otherwise reducing their accrued vacation balances.

3. Recommendations Regarding City's Vacation Policies

In the year 2012, the City implemented procedures for employees to document any leaves of absence, also requiring sign-off by the employee's supervisor. This should alleviate issues relating to unexplained absences and create a paper trail to accurately record vacation accrual balances, and properly justify cash-outs of vacation hours consistent with the City's written vacation policies. The City should also periodically review the accrued vacation balances of its employees to ensure that they are accurately stated and do not exceed the City maximum allowed thresholds.

We have been advised that as of July 1, 2012, all employees' accrued vacation balances were adjusted so as to comply with the 100 and 200 maximum allowable vacation accruals as applicable to the various City employees. Our review of the City's electronic payroll reports also confirms that this adjustment was made to each City employee's accrued vacation balance.

III. Improper Use of City Property

Section 3.13 of the Personnel Manual states, "City-owned vehicles shall never be used for private purposes" The Fire Chief is the only exception noted in the Personnel Manual, which states that the Fire Chief is provided a City-owned vehicle, which may be taken home and used during any work period for travel within and out of the City.

A. Findings Regarding Improper Use of City Property

Selected employees, in addition to the Fire Chief, were allowed, by approval of prior mayors, to use City-owned vehicles to commute from their residences to the City of Sun Valley offices, and to house the vehicles overnight at their respective residences. The Personnel Manual did not define an allowance for personal use of a City-owned vehicle. Some of these vehicles were allowed to be used for more than incidental personal use. In some cases, the City paid for fuel for the City-owned vehicles in excess of City business and incidental personal use.

Again, the Personnel Manual states, "Amendments or revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation." Thus, any allowance of personal use of a City vehicle should have been documented by resolution of the Mayor and Council prior to the allowance of personal use of any City vehicle. Additionally, the City should issue the appropriate tax documentation, such as a 1099, to any employee receiving a fringe benefit such as personal use of a City-owned vehicle.

At the outset of our engagement, we were asked to investigate whether a 1999 pick-up, a white trailer, a Yamaha 125 motorcycle, and a red and green snowmobile were misappropriated from the City. Our investigation revealed no such misappropriation.

Mr. Clay Gill
August 23, 2012

B. Recommendations Regarding Accounting Controls for City Property

The City's accounting policies only require assets with a fair market value greater than \$5,000 to be recorded on the City's physical asset schedule. This threshold is very high and will exclude most assets of the City and, therefore, should be revisited and made consistent with the City's recent practice of creating an asset log in each department for any asset with a value exceeding \$250. Not having assets on an asset schedule makes it easier for assets to disappear unnoticed. Further, any City-owned assets that can be titled or registered should be titled and registered in the name of the City of Sun Valley to further ensure that those types of assets cannot be disposed of without proper City authorization.

IV. Issues Relating to Use of City of Sun Valley Issued Credit Cards

A. City Policies Regarding Credit Card Use

The City's written credit card policy and credit card user agreement provides that City-issued credit cards will only be used for City business travel, approved conferences and meetings, and payment of supplies under \$300. The purchases must be documented with receipts. The credit cards are not to be used for personal use.

B. Findings Regarding City Credit Card Usage

There was a severe lack of control with respect to credit card usage in the fire department. Credit card purchases were allowed in some instances without approval or documentation. Further, our investigation revealed instances of inappropriate credit card purchases because either they were unrelated to City business or they were excessive purchases in that the department was purchasing gear and equipment that was of greater quality than necessary to perform the tasks as an on-call EMT firefighter, or of greater quality than the standard gear issued to other on-call EMT firefighters. Examples include clothing, food, ski tickets, and electronic accessories. Many of these items that were purchased with the City credit card and determined to be unrelated to City business or excessive are also not in the possession of the City, further bolstering our finding that these purchases were unrelated to City business. Our investigation also uncovered instances where the credit card for the fire department was given to a family member with little to no control over the usage of the card and department members refusing to review and sign off on credit card statements because this department member believed that the charges itemized on the statement were for personal charges rather than City related business. Through the course of our investigation, we also learned that the issue relating to possible inappropriate charges within the fire department was brought to the attention of City administration in writing as early as February of 2010.

The City's credit card policy also requires each City of Sun Valley employee that is issued a City credit card to sign a Credit Card User Agreement. Upon our request, the City was only able to locate two signed City Credit Card User Agreements, although credit cards were issued to each department head.

Our investigation ultimately revealed \$23,494 in inappropriate charges on the credit card issued to the fire department.

Mr. Clay Gill
August 23, 2012

C. Recommendations Regarding City Credit Card Usage

The City's Credit Card Policy states that the City's Finance Manager/Treasurer is responsible for administration of the credit cards to ensure proper use. While this same concept is imposed upon the department heads that are issued credit cards through the Credit Card User Agreement to be signed by each department head, the City's policy should be amended such that department heads that are issued the credit card are also responsible for ensuring proper use of the credit card. Additionally, the City should ensure that each employee that issued a credit card signs a Credit Card User Agreement before the card is physically given to that employee. Finally, the fully-executed Credit Card User Agreements should be preserved in a secure location in the event they are needed as part of any enforcement process.

We have reviewed the City's revised procedures for approving charges on City credit cards that were implemented in 2012. We believe that the new procedures are adequate, but should also address the situation of a review by a family member, such that any charges on a City credit card by a department head's family member should be required to be pre-authorized by the City's Finance Manager/Treasurer or some independent person other than the department head who is a family member.

V. Review of City's Fuel Purchases

A. Summary of Investigation on Fuel Card Usage

We reviewed each department's fuel purchases for the years 2009 through 2011. We also reviewed the gallon usage in each department for the period January through June 2011, as compared to January through June 2012, after new procedures regarding fuel reports were put in place. The later study revealed that gallon usage was fairly consistent in every department but the police department and the fire department, with fuel usage increasing significantly in the police department and declining significantly in the fire department. Moreover, the later study revealed a decline in usage for one of the fuel cards assigned to one of the fire department's vehicles by more than 50%.

Based upon our initial findings, we conducted a more detailed review of the fire department's fuel usage. We learned that each vehicle in the fire department is assigned a fuel card. There are, however, some pieces of equipment that are not assigned their own fuel card, such as a snowmobile trailer, snowmobiles, and motorcycles used for backcountry rescue. In any event, we were told that some vehicles were fueled up with a fuel card assigned to another fire department vehicle. We additionally found that some fuel cards had multiple fuel-ups within a very short period of time; for example, one instance where there were 4 fuel-ups for 68 total gallons within an hour and a half of each other. We also learned that the fuel pump used by the fire department has the ability to track the user of the fuel card through the entry of an identification number, and the ability to track the odometer reading of the vehicle being fueled, although neither device at the fuel pump was ever used by the fire department during the review period.

We also learned that two individuals were tasked with reviewing the monthly fuel card statements for the various fuel cards assigned to the fire department vehicles. As mentioned previously, one of those reviewers refused to sign off on some yellow sheets because that person did not believe the fuel charges were related to City business. In any event, the unsigned yellow sheet with the fuel card statement attached was sent to the Finance Manager/Treasurer and ultimately approved for payment.

Mr. Clay Gill
August 23, 2012

B. Conclusions Regarding City Fuel Purchases

While we did not find anyone who witnessed someone in the fire department using a City fuel card for personal purchases, the other evidence of suspect fuel-ups within a short period of time on the one fuel card, coupled with an almost 50% decline in gallons purchased on that same card in 2012 as compared to 2011 after that fuel card was assigned to a different user, is highly suggestive of inappropriate fuel purchases on that City-issued fuel card.

C. Recommendations Regarding Fuel Card Policies

We have reviewed the City's new procedures governing fuel card purchases implemented in 2012, including requiring a fuel log in each vehicle and the use of the tracking devices at the fuel pump previously mentioned. We believe those new policies are thorough and comprehensive and should address the concerns relating to the findings set forth above.

VI. Reimbursement of Employee City Business Travel Expenses

A. City Policies on Reimbursement of Travel Expenses

The City's written policies during the review period provide that written applications, including cost estimates and preapproval from a supervisor, shall be completed before traveling outside of the county. The City Administrator will set maximum per diems for meals and the federal tax reimbursement for use of a personal vehicle for City business.

B. Findings Regarding City Policies on Reimbursement of Travel Expenses

We found no evidence of the policy being followed with respect to written applications and preapprovals for business travel expenses. We did find, however, that approval of travel related expenses was done after the fact in accordance with City policy.

C. Recommendations Regarding City Policies on Reimbursement of Travel Expenses

Subject to our comments and findings regarding control, supervision, review and approval of disbursements, in general, we believe that if the City adheres to policies regarding the process for review and approval of City travel expenses, the process is adequate.

VII. Inappropriate Business Dealings Between the City of Sun Valley and Relatives of City of Sun Valley Employees

We were initially tasked with looking into whether there were any inappropriate business dealings between the City of Sun Valley and any relatives of the City of Sun Valley's employees. We were only able to identify two vendors that had any relation to a City of Sun Valley employee. But there was no evidence of any inappropriate dealings, nor was there any evidence that the City of Sun Valley employee improperly influenced anyone to use their relative or otherwise participated in the process to hire that relative as a vendor to the City of Sun Valley.

Mr. Clay Gill
August 23, 2012

CONCLUDING REMARKS

The documents we reviewed and the witnesses interviewed as part of the forensic investigation are set forth below. Further, as indicated above, the more detailed findings of our investigation are set forth in the related Exhibits 1 to 18 and supporting Schedules.

INTERVIEW LIST

The following individuals were interviewed during the course of our investigation:

- Eric Adams
- Mayor Dewayne Briscoe
- Reid Black (by Clay Gill)
- Jeff Carnes
- Tina Carnes
- Cameron Daggett
- Virginia Egger
- Ray Franco
- Michelle Frostenson
- Mark Hofman
- Mal Prior
- Bill Whitesell
- Wayne Willich (including follow-up interview by Clay Gill)

In May of 2012, Sharon Hammer was invited to be interviewed, but declined the invitation at that time upon advice of her attorney.

SUMMARY OF DOCUMENTS REVIEWED

- General Documents
 - Organization chart
 - City of Sun Valley Personnel Policies and Procedure Manual
 - Resolutions relating to amendments to the Personnel Manual
 - Credit Card Policy
 - Salary plan
 - PERSI regulations
- Audited Financial Statements for the years ending September 2009 and 2010
- Department Operating Statements for the years ending September 2009 and 2010
- Department Specific Documents
 - Administration
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
 - Building
 - General ledger detail for FY 2009-2011
 - Detailed payroll records

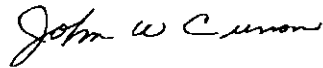
Mr. Clay Gill
August 23, 2012

- Community Development
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Fire
 - General ledger detail for FY 2009-2011
 - Monthly payroll summary sheets
 - Monthly EMT/Drill Logs
 - Monthly time cards prepared by volunteers
 - Blaine County emergency response data
 - Fire hydrant testing reports
 - Detailed payroll records
- Police
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Street
 - General ledger detail for FY 2009-2011
 - Detailed payroll records
- Payroll Documents
 - Payroll reports for all City of Sun Valley employees for 2009 – 2011
 - Leave Hour reports for all City of Sun Valley employees for 2009 – 2011
 - Time Cards for certain employees
 - Vacation Request Forms for certain employees
- Expenditure Records
 - Invoices/Receipts for FY 2009-2011
 - Credit Card Documents
 - Listing of all City credit cards and identity of City employee/representative to whom City credit card is issued
 - Documentation showing notice provided to individual employee(s) of proper use of City-issued credit card
 - Credit card statements
 - Credit card receipts or other documents showing itemizations supporting charges to card, dates of purchase, phone numbers, e-mail addresses, signature
 - Documents showing sign-off by superior, supervisor, or manager approving charges to credit card
 - “Yellow” sheets
 - Expense Reimbursements
 - Documents regarding City policies and procedures for claiming reimbursement of expenses from the City
 - Forms completed for expense reimbursement requests
 - Supporting documents for reimbursement requests
 - Hotel receipts
 - Restaurant receipts
 - Fuel receipts
 - Credit card receipts and statements

Mr. Clay Gill
August 23, 2012

- Check ledgers or registers showing payments made for expense reimbursements
 - Documents showing sign-off by superior, supervisor, or manager of any expense reimbursement request
- Accounting System
 - Access was granted to the Caselle accounting software system
- Various Correspondence
- Cell Phone Records
 - Cell phone billing records
- Budgets
 - City of Sun Valley budgets for FY 2009-2012
- Assets
 - Asset listings for City of Sun Valley owned assets
 - Depreciation schedule
 - City Policies and Procedures relating to use of City-owned property.
- Fuel Records
 - Fuel card purchase data
 - Vehicle maintenance records
 - United Oil fuel records and invoices

Yours truly,



John W. Curran

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BLAINE COUNTY PROSECUTING ATTORNEY

COPY

November 21, 2012

Mayor Dewayne Briscoe
Members of the Sun Valley City Council
Sun Valley City Hall
PO Box 416
81 Elkhorn Road
Sun Valley, ID 83353

RE: Criminal Investigation re: Employee Misconduct

Mayor Briscoe and Members of the Sun Valley City Council:

I. Scope of Investigation

In October of 2011, Sun Valley City Treasurer Michelle Frostenson complained to Sun Valley Mayor Wayne Willich that certain employees were misusing City property, committing fraud with City credit cards and failing to accurately document personal leave/vacation hours. Based upon Frostenson's complaints, the Sun Valley City Council notified Kirt Naylor of the Idaho Counties Risk Management Program (ICRMP) who in turn facilitated an ICRMP contract with Patricia Ball, Esq. of Management Northwest to conduct an investigation into Frostenson's complaints.

In December of 2011, my Office was requested by ICRMP attorney Kirtlan Naylor to initiate an investigation regarding allegations of employee misconduct, which included misuse of public funds, time card fraud, credit card abuse and illegal use of public

property. This request was initiated as a result of a conclusion by independent investigator Patricia Ball that "revealed suspected criminal activity". Specifically, the request included allegations that former City Administrator Sharon Hammer misused a City vehicle and credit card, and failed to accurately account for personal leave/vacation hours. In addition, it was alleged that Fire Chief Jeff Carnes had possibly made unauthorized personal and excessive gasoline purchases using a City credit card, and had engaged in time card fraud involving his son, part-time firefighter/EMT Nick Carnes.

As the Prosecuting Attorney is generally precluded from conducting their own criminal investigations, I requested investigative assistance from the Idaho Attorney General's Criminal Investigative Unit and Scott Birch, Criminal Investigative Unit Chief, opened a criminal investigation into the allegations in January of 2012. On February 9, 2012, Investigator Birch obtained three (3) bankers boxes of documents from Naylor that included credit card statements from the City of Sun Valley for October of 2010 through November 2011, payroll and time card records for the Sun Valley Fire Department for fiscal years 2009-2011, as well as a copy of Patricia Ball's Investigation Report dated December 20, 2011. A review of this data necessitated additional documentation that was requested and/or subpoenaed from a number of sources including the City of Sun Valley, employee cell phone records, independent employment records, court affidavits, and sales receipts from various retailers from March of 2010 up to and including September of 2012. In addition to the referenced documents, an electronic copy of the HSNO Forensic Audit and supporting documentation was reviewed and heavily relied during the course of the investigation.

II. Standard for Filing Charges in Criminal Cases

In order to charge a person with a crime, my legal and ethical responsibility requires that there be probable cause supporting the charge. See State v. McGreevey, 17 Idaho 453, 463-64, 105 P. 1047, 1050 (1909); Idaho Const. Art. I, § 8; Idaho Code § 19-804; Idaho Crim. R. 5.1; IRCP 3.8(a). Probable cause results from information that would lead a person of ordinary care and prudence "to believe or entertain an honest and strong

suspicion that such person is guilty” of a particular crime. State v. Alger, 100 Idaho 675, 677, 603 P.2d 1009, 1011 (1979).

Having a strong enough suspicion to believe in a person’s guilt does not end the inquiry. In determining whether charges should be filed, a prosecutor must also determine whether there is a likelihood of conviction given the high standard of proof required in a criminal case. In criminal cases, the burden of proof placed upon the State is to prove its case beyond a reasonable doubt, which is a far more difficult burden of proof than the preponderance of the evidence standard used in civil cases. See State v. Sheahan, 139 Idaho 267, 273, 77 P.3d 956, 962 (2003) (explaining that the meaning of proof beyond a reasonable doubt requires “an abiding conviction, to a moral certainty, of the truth of the charge” in the eyes of a unanimous jury).

Analyzing the likelihood of conviction requires me to look at the strength of the evidence presented, as well as consider defenses and evidence likely to be raised by the accused. In the context of government employees, the most common of these defenses is that the employee was given permission, or was authorized, to engage in the particular act(s) of alleged misconduct. If tacit or explicit authorization was given, the employee may lack the requisite criminal intent, as they believed their actions were justified and permitted. See I.C. 18-2406(3) (providing for a defense to theft when the property is taken “open and avowedly, and under a claim of right made in good faith”).

In sum, I am compelled to review requests for criminal prosecution very critically. Besides the important legal and ethical considerations set forth above, I must also review the human and economic costs of prosecution, and the toll criminal prosecution takes on all involved. While I am responsible for seeing that those who violate the criminal laws in our community are brought to justice, I will not initiate criminal prosecution unless I am very confident that the charges are supported by compelling evidence and will ultimately be proven beyond a reasonable doubt at trial.

III. The Allegations against Sharon Hammer

a. Misuse of City Property

Hammer is alleged to have used a City vehicle for personal use, above and beyond her responsibilities as City Administrator, and is also alleged to have used a City credit card for gas purchases for the personal use of the vehicle.

There is a lack of hard evidence supporting criminal charges for these allegations. Although Hammer used the City vehicle for personal use, there is a lack of documentation to support criminal charges. As stated in the HSNO report,

Based on our review of the [Hammer fuel] charges, there is not adequate information to determine if the charges were for gasoline use in a City-owned or a personally-owned vehicle, nor can we determine how many miles the City-owned car was used for personal use and City business use. It does not appear that Ms. Hammer maintained documentation as to the type of City business attended to with the City-owned vehicle or the miles used for City or personal use.

The lack of evidence establishing these alleged crimes with specificity presents a serious hindrance to filing criminal charges and will ultimately hinder any attempt to prove charges beyond a reasonable doubt.

More compelling, however, is evidence establishing that the City permitted these activities. Despite the fact that use of a City vehicle for personal use is strictly prohibited by City of Sun Valley Policy 3.13, Mayor Wayne Willich expressly authorized Hammer to use the City vehicle for business and personal use, citing her standing as an on-call EMT in support of her need to use the vehicle on a full time basis. Willich also authorized Hammer to use the city credit card for fuel purchases associated with Hammer's use of the City vehicle. The credit card charges were then submitted and approved during the regular course of claims, which provides another layer of authorization from Hammer's supervisors.¹

¹ As noted throughout the HSNO report, standard procedures and protocols were routinely disregarded by City officials entrusted with the oversight of credit card and claim processing. This general willingness to disregard City policies and procedures is a recurring theme throughout this investigation.

Evidence and documentation supporting this alleged misuse of City property is either lacking or the activity had been approved by City officials. Accordingly, I cannot find that sufficient evidence exists to file and prove these allegations beyond a reasonable doubt.

b. Personal Leave

Hammer is alleged to have failed to account for personal leave she took while employed by the City. Specifically, the HSNO Report found 352 unexcused hours for which the City paid Hammer.

As was the case with the use of the City vehicle, Hammer's use of personal leave was consistent with the apparent approval of her supervisors. In this regard, Willich allowed Hammer to exercise a "flex time" schedule that did not require Hammer to account for her actual hours on the job. Although the Personnel Manual states that the normal work schedule is 8:00 a.m. to 5:00 p.m., Willich expected Hammer, as a senior executive, to work additional hours beyond her regularly scheduled work day and was authorized to take time off that corresponded with the extra hours she worked beyond the regular work day.² This lack of a structured schedule and flexible time accounting makes it highly likely that there are considerable hours of Hammer's work time that are unaccounted for, and these unaccounted hours could significantly decrease, or even erase, the 352 unexcused hour deficit set forth in the HSNO Report. Furthermore, there is no way of establishing an accurate accounting of hours worked without Hammer's own recollection, and thus, no way of independently establishing when Hammer was working or taking personal time off, which poses another significant problem in building a criminal case against her.

For the above stated reasons, there is insufficient evidence to establish that Hammer submitted false claims or committed theft for unaccounted personal leave, and I will not file criminal charges for this alleged misconduct.

² These extra hours included Hammer's attendance at evening meetings, work performed at home, and her status as a 24/7 EMT.

IV. The Allegations Against Jeff Carnes and the Fire Department

a. Fuel Charges

The Ball Investigative Report, HSNO Forensic Audit and the IAG Investigation uncovered inappropriate credit card charges on the City of Sun Valley Fire Department fuel credit card and account managed by Chief Carnes. The HSNO audit report found the volume of fuel usage on Carnes' credit card was not consistent with the usage needed for only City vehicles, and that these excess fuel charges suggested that there was fuel usage for personal vehicles as well.

Once again, there is a complete lack of evidence establishing that particular fuel charges were used for personal use. This is primarily due to what the HSNO Report refers to as "a lack of control" over fuel card supervision and protocols within the Fire Department, City Finance Manager/Treasurer, City Administrator, Mayor, and rotating Council member.³ Specifically, City records are missing the following critical information: (1) the vehicles or equipment being fueled; (2) odometer readings; (3) name of the purchaser; and (4) explanations tying the fuel purchase to a legitimate use of City equipment. Although each vehicle was issued its own fuel card, different cards were used for different vehicles, with different fuel types, by different individuals.

In addition, interviews with past and present employees suggest several plausible explanations for what looked like excessive use of these cards. For example, one explanation was that Chief Carnes would use his credit card to fill up all of the vehicles after a single incident. This would account for an excessive charge, for different fuel types, on Carnes' credit card, but would likely constitute legitimate fuel expenditures. Without sufficient documentation, each of these explanations, true or not, could suffice to establish reasonable doubt in the minds of jurors. Given the lack of documented proof of illegitimate fuel purchases, lack of administrative oversight, and the fact that multiple people had access to the fire department fuel account, it cannot be proven beyond a reasonable doubt that criminal conduct occurred in relation to the fuel purchases.

³ Hammer was notified of possible fuel card abuses in February, 2010, but did not take any action to investigate or institute administrative controls to curb possible misconduct.

b. Other Credit Card Purchases

The next allegation of misconduct on the part of Chief Carnes involves the misuse of the Sun Valley credit card for certain purchases. These inappropriate purchases include items that were alleged to have been purchased for personal use, such as custom clothing, electronic equipment, food, ski tickets, and snowmobile repairs. In addition, the HSNO Report determined that there was a general lack of control over the manner in which the City credit card was used, including inappropriate coding of purchases, lack of documentation of purchases, use of the credit card by someone other than the person the card was issued to, payment of sales tax, and lack of permission/authorization for purchases.

As discussed previously, there was a general lack of institutional controls over the manner in which the Fire Department credit card was used, and this included the manner in which purchases were approved by others within City government. These lax controls were present in all or most levels of City government and present an enormous challenge to any criminal prosecution due to the lack of accurate documentation establishing specific instances of misconduct. In fact, the submission of these claims and the subsequent assent and approval of these purchases by the Administrator⁴, Mayor, Finance Officer, and revolving Council member create a presumption that these purchases were authorized as valid expenditures. In the eyes of a criminal jury, the fact that City policy was not followed is largely immaterial in light of this authorization, since the failure to follow policies and procedures was widely accepted.

Moreover, the alleged purchases were arguably made for legitimate City uses. For example, investigative interviews of Chief Carnes and Willich revealed that many of the excessive and unwarranted credit card purchases were arguably pre-authorized based upon undocumented discussions between Willich and Carnes, and an understanding that the City would provide certain gear, clothing and equipment to Chief Carnes and other employees of the fire department. Although some may quarrel with whether there was a legitimate need for such items, or their exorbitant price tags, such matters do not raise issues of

⁴ Hammer was also notified of credit card abuses in February, 2010, but she did not take any action to investigate or institute administrative controls at that time.

criminal culpability. Since the expenditures were authorized, they cannot be considered theft, and cannot be proven beyond a reasonable doubt.

c. Time Card Fraud

The final allegation concerns purported time card fraud in the Sun Valley Fire Department. The specific allegation being that Nick Carnes, son of Chief Carnes was paid for hours that he did not legitimately work. Specifically, the HSNO Report raises issues concerning missing documentation for Nick Carnes and others⁵, illegible time cards for Nick Carnes that were prepared by his mother, Tina Carnes, vague descriptions of work performed, and large discrepancies between Nick Carnes' hours in comparison with similar employees.

Again, there is a lack of specific instances proving that Nick Carnes was not working at times when he was paid by the City. The sheer number of hours worked certainly raises suspicion, and although there are numerous hours of undocumented or improperly documented payments to Nick Carnes, it is impossible to reconstruct an accurate timeline or find supporting evidence that the State can rely upon to prove criminal malfeasance. Most notably, there is nothing establishing that Nick Carnes did not work the hours he was paid for, and there are several levels of administrative approval for these hours worked and the corresponding payments to Nick Carnes. As with the other allegations, there was a profound lack of management oversight and lax record keeping that heavily contributed to this situation and greatly hinders criminal prosecution.⁶ Taken together, these factors prevent the time card fraud allegations from being proven beyond a reasonable doubt.

⁵ The HSNO Report noted that time cards were missing for Sharon Hammer, Nick Carnes, and Tina Carnes.

⁶ Most shocking is the lack of any administrative control to curb the appearance of impropriety created by and the familial relationship between Jeff, Tina, and Nick Carnes. Instead of developing a system of oversight that would eliminate any appearance of nepotism, Nick was allowed to report his hours to his mother, who then created time cards for his father's approval and submission. At a minimum, such a close relationship begs for close scrutiny and oversight from the Mayor and Administrator. That apparently did not occur here.

V. Conclusion

I will not be filing criminal charges against past or present Sun Valley City employees for the allegations discussed in this letter. Although no criminal charges will be forthcoming, the investigations revealed serious failures at multiple levels of management and supervision within the City of Sun Valley, including (1) a failure to document; (2) a failure to follow stated policies and procedures; (3) lax management and oversight; (4) poor time accounting; (5) apparent conflicts of interest; and (6) a lack of checks and balances throughout the claims process. These failures in oversight contributed to a culture of entitlement where certain employees took advantage of the City's mismanagement, and led to a breach of the public trust and damage to the City's professional reputation. I trust that the City of Sun Valley will institute the necessary actions to make sure that the mistakes of the past are not repeated in the future.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jim J. Thomas', with a long horizontal flourish extending to the right.

Jim J. Thomas
Blaine County Prosecuting Attorney

cc: Kirt Naylor, ICRMP
Paul Panther, Chief Idaho Attorney General Criminal Division

PRESS RELEASE

FROM: Mayor Dewayne Briscoe, City of Sun Valley
DATE: June 11, 2012
Re: Sun Valley's City Clerk Tort Claim Notice Settled

On April 20, 2012, City Clerk Kelly Ek filed a tort claim notice alleging that, "Ms. Hammer (City Administrator) and Mayor Willich retaliated against Ms. Ek both directly by their offensive behaviors as well as disparaging her to fellow employees." Ms. Ek's tort claim notice cited a violation of Idaho's "Whistle Blower" statute and other federal and state protections.

The tort claim notice included that "Ms. Hammer and Mayor Willich, in an effort to discredit Ms. Ek's position, influenced Ms. Ek's co-workers to criticize, shun, disrespect, and reject Ms. Ek's effort in carrying out her responsibilities as City Clerk." The tort claims the "malicious and unfounded retaliation" was a result of Ms. Ek bringing matters to the attention of the City Council concerning Ms. Hammer's administration, which "violated her position of authority as Sun Valley City Administrator."

The City of Sun Valley's liability insurance carrier Idaho Counties Risk Management Program (ICRMP) provided coverage for the tort claim notice. The Mayor and City Council were not parties to the negotiation and had no role in the settlement.

ICRMP has reported to the City that it has resolved all claims relating to this tort claim notice. ICRMP will pay Ms. Ek \$65,000, plus \$7,000 for attorney's fees to resolve the matter. Ms. Ek tendered her resignation, effective June 8, 2012, which Mayor Briscoe has accepted.

Mayor Briscoe, informed of the resolution, stated:

This is another step in resolving the difficult issues, which were brought to City Council and me just after the November 5th election. It is my responsibility with City Council to guarantee to our citizens that all City officials and employees consistently meet the highest standard of integrity and comply with federal and Idaho state laws. We will continue in this endeavor as ongoing issues are resolved in the months ahead.



PRESS RELEASE

FINANCE MANAGER/TREASURER'S DRAFT TORT CLAIM NOTICE SETTLED

On June 27, 2012, the City of Sun Valley's insurer, Idaho Counties Risk Management Program (ICRMP), reported to Mayor Dewayne Briscoe and City Council that it has settled any potential claim against the City of Sun Valley and its officials in response to a draft tort claim notice ("Notice"), which was submitted to ICRMP counsel from the attorney for City Finance Manager/Treasurer Michelle Frostenson. After full consideration of the matter, ICRMP settled the potential claim for a payment to Treasurer Frostenson of \$84,127, of which \$13,519 was for attorneys' fees and costs. As in the recent settlement of City Clerk Kelly Ek's tort claim notice, neither the Mayor nor the City Council were involved in the negotiations or ICRMP settlement with Treasurer Frostenson.

The basis of the draft Notice was the violation of the protections afforded in the State of Idaho's "Whistleblower" laws. Treasurer Frostenson's draft Notice states, "During the course of Mrs. Frostenson's employment with the City of Sun Valley, it became known to Mrs. Frostenson that Ms. Hammer and other employees of the City had abused their respective positions and had thereby misappropriated City assets in various ways, which include, but are not limited to, the following: a) Misappropriating funds of the City; b) Use of the City's motor vehicle and other City assets for personal benefit; c) Use of City-issued credit cards for personal benefit, other than City business; d) Misrepresentation of paid time off; e) Approval of fraudulent timecards of certain "special employees," thereby allowing these "special employees" to receive benefits(s) to which they were otherwise not entitled; f) Creation of a hostile work environment by misusing positions of authority; g) Failure to comply with the anti-nepotism statutes, ordinances and/or rules which were in effect and were to be abided by individuals employed by the City."

The draft Notice continues, "Mrs. Frostenson communicated in good faith the suspected illegal conduct and waste to Mayor Willich on or about October 5, 2011, and to the City Council on or about November 11, 2011. Following the communication, Mayor Willich forwarded a certain Notice of Advice Regarding Investigation to Mrs. Frostenson, which provided that 'should you believe that any action or conduct by co-workers or supervisors is in any way intimidating or retaliatory to you as a result of your involvement with any employment investigation you are to notify your supervisor or the City's outside counsel.....'

Notwithstanding, on or about December 28, 2011, and at various times thereafter, the City, its Council and specifically Ms. Hammer and Mayor Willich himself retaliated against Mrs. Frostenson by placing her on unpaid leave, by subjecting Mrs. Frostenson to offensive behavior and words, and by disparaging Mrs. Frostenson to fellow employees."

Mayor Dewayne Briscoe informed of the settlement of this claim stated: "Many difficult issues have arisen before the City since the November election. The settlement of this claim, now following settlement of the City Clerk's claim earlier this month, allows the City to move forward. None of these outcomes are easy. The next key step will be the completion of the City wide forensic audit. With City Council, I will continue to work vigorously to address and to resolve all matters, so the citizens of Sun Valley can trust that its officials and employees are engaged in the day-to-day business of good government."

Sun Valley City and City officials deny any wrongdoing that is alleged in the draft Notice.

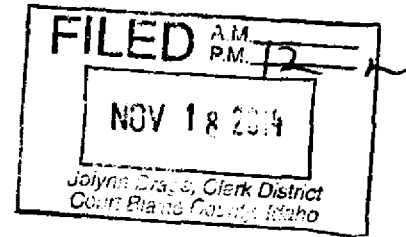
Mrs. Frostenson has tendered her resignation, which Mayor Briscoe has accepted. During the transition period to find and train a successor, Mrs. Frostenson will provide payroll and payable services, and assist with other duties required of the Finance Manager for the City, as an independent contractor.

The complete draft Tort Claim Notice is available on the City of Sun Valley's website at www.svidaho.org.

Press Release approved for publication and posting by Mayor Dewayne Briscoe, June 27, 2012.

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Plaintiff Sharon R. Hammer ("Plaintiff"), by and through her counsel of record, Jones & Swartz PLLC, and pursuant to Idaho Rules of Civil Procedure 7(b) and 56, hereby requests that the Court enter judgment as a matter of law dismissing Defendant City of Sun Valley's Fifth and Sixth Affirmative Defenses that Plaintiff's claims arising from her rights and protections under the Idaho Protection of Public Employees Act are barred by waiver and release.

This Motion is made and supported by the pleadings and filings of record before the Court as well as the Memorandum, Affidavit of Counsel, Affidavit of Sharon R. Hammer,

Affidavit of James R. Donoval, and Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment, each filed contemporaneously herewith.

DATED this 17th day of November, 2014.

JONES & SWARTZ PLLC

By 
ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

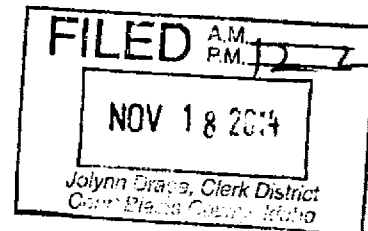
The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Sharon R. Hammer requests that the Court enter summary judgment dismissing Defendant City of Sun Valley's ("City" or "Sun Valley") Fifth and Sixth Affirmative Defenses that assert Ms. Hammer has waived or released her claims, rights and protections afforded under the Idaho Protection of Public Employees Act, I.C. §§ 6-2101, *et seq.* ("IPPEA"). Sun Valley's affirmative defenses are based on a statement of waiver and release signed by Ms. Hammer after her employment with Sun Valley was terminated. Sun Valley purportedly terminated Ms. Hammer "without cause" pursuant to Section 3.A. of her written employment contract.

Section 3.A. also contained an exculpatory clause that conditioned Ms. Hammer's receipt of severance pay on her signing a statement of waiver and release of claims arising from her termination without cause.

Sun Valley now relies on that statement of release in its attempt avoid liability under the IPPEA. But, Ms. Hammer could not and did not waive or release any statutory right or protection created by the IPPEA. As a matter of express public policy, the Court should dismiss Sun Valley's affirmative defenses and grant Ms. Hammer's Motion for Summary Judgment.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On June 1, 2008, Ms. Hammer began her employment with Sun Valley as its City Administrator.¹ The terms of her employment were set forth in the City Administrator Employment Agreement ("Employment Agreement").² The City of Sun Valley Personnel Policies & Procedures Manual was incorporated into the terms of the Employment Agreement.³

2. On September 17, 2009, Ms. Hammer's Employment Agreement was extended through the written City Administrator Employment Agreement Extension to automatically renew on June 1st of each year "unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date."⁴

3. On December 28 and 29, 2011, then-Sun Valley Mayor Wayne Willich confirmed in writing that Ms. Hammer's Employment Agreement was valid through June 22, 2012.⁵

¹ AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Hammer"), filed contemporaneously herewith, ¶¶ 3-4, 12, Ex. 1; AFFIDAVIT OF WAYNE WILlich IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Willich"), filed contemporaneously herewith, ¶ 3.

² Aff. of Hammer, ¶ 4, Ex. 1; Aff. of Willich, ¶¶ 3, 5.

³ Aff. of Hammer, Ex. 1.

⁴ AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Counsel"), filed contemporaneously herewith, Ex. 1.

⁵ Aff. of Counsel, Ex. 2.

4. Beginning in or about October 2009 through September 2011, Ms. Hammer made multiple complaints to Mayor Willich and City Attorney Adam King regarding City Councilman Nils Ribi's acts of harassment, hostility and misconduct against her.⁶ Mayor Willich repeatedly spoke with Mr. Ribi regarding Ms. Hammer's complaints.⁷ Mr. Ribi admits he had knowledge of Ms. Hammer's complaints against him by at least November 11, 2011.⁸

5. On October 5, 2011, City Treasurer Michelle Frostenson approached Mayor Willich with concerns that, among other alleged problems, there had been improper vacation accruals totaling approximately \$133,000.⁹ Mayor Willich, with the assistance of Sun Valley bookkeeper Tami Hall, determined that Ms. Frostenson's allegations lacked veracity.¹⁰

6. Beginning on or about November 10, 2011, Ms. Frostenson and City Clerk Kelly Ek began communicating with Mr. Ribi and Mr. King regarding allegations of misconduct against Ms. Hammer and materials that purportedly supported their allegations.¹¹

7. On November 10, 2011, Mr. Ribi, then-Council President DeWayne Briscoe, and Councilman Robert Youngman called a Special Meeting of the City Council to be held on November 11, 2011.¹² In addition to the three Councilmen, Mayor Willich, Mr. King, and Ms. Frostenson were present.¹³ At the Executive Session, Ms. Frostenson presented the same allegations she had presented to Mayor Willich on October 5, 2011.¹⁴

⁶ Aff. of Hammer, ¶¶ 13, 17; Aff. of Willich, ¶¶ 11-12; Aff. of Counsel, Ex. 24, Willich Dep. 32:4-11, 32:22-34:11, 34:18-35:9, 133:16-136:3, 136:12-137:20.

⁷ Aff. of Counsel, Ex. 24, Willich Dep. 32:12-21, 36:2-25, 139:8-140:2; Aff. of Hammer, ¶ 13.

⁸ Aff. of Counsel, Ex. 26, Ribi Dep. 12:2-6.

⁹ Aff. of Counsel, Ex. 24, Willich Dep. 11:14-12:25.

¹⁰ Aff. of Counsel, Exs. 23, 24, Willich Dep. 16:7-17:15, 20:24-21:12; *see* Aff. of Counsel, Ex. 27, Youngman Dep. 37:13-38:6.

¹¹ Aff. of Counsel, Exs. 4-6.

¹² Aff. of Counsel, Ex. 7; Aff. of Hammer, ¶ 14.

¹³ Aff. of Counsel, Ex. 24, Willich Dep. 24:15-25; Aff. of Hammer, ¶ 14.

¹⁴ Aff. of Counsel, Ex. 24, Willich Dep. 25:1-2, 25:23-29:23; Aff. of Counsel, Ex. 27, Youngman Dep. 33:12-35:4; Aff. of Hammer, ¶ 14.

8. After the November 11, 2011 Special Council Meeting, Councilmen Ribi, Briscoe, and Youngman each demanded Ms. Hammer's resignation from her position.¹⁵ Ms. Hammer refused to resign.¹⁶

9. As early as the November 11, 2011 Special Council Meeting, Mr. Ribi was asserting that there could be criminal charges made against Ms. Hammer.¹⁷

10. On November 14, 2011, another Special Council Meeting was held. At that meeting Mayor Willich and the City Council decided to hire an independent person to look into the allegations brought by Ms. Frostenson against Ms. Hammer.¹⁸ At a later meeting, and against Mr. Ribi's vote, the City Council also instructed that an investigation be conducted into Ms. Hammer's complaints of harassment against Mr. Ribi.¹⁹

11. On November 18, 2011, Mayor Willich provided Ms. Hammer with written notice that she was being put on paid administrative leave.²⁰ He told Ms. Hammer that she was placed on administrative leave to protect her from Mr. Ribi, not because she had done anything wrong.²¹

12. On November 21, 2011, Ms. Hammer filed her VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT and her EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER PURSUANT TO THE IDAHO PROTECTION OF PUBLIC EMPLOYEES ACT in the Blaine County District Court, Case No. CV-2011-928 ("2011 IPPEA Case"). The 2011 IPPEA Case named as defendants Nils Ribi, the

¹⁵ Aff. of S. Hammer, ¶ 14; Aff. of Counsel, Ex. 24, Willich Dep. 27:4-10, 29:7-23; Aff. of Counsel, Ex. 29, Lamb Dep. 14:8-17:7.

¹⁶ Aff. of S. Hammer, ¶ 14.

¹⁷ Aff. of Counsel, Ex. 24, Willich Dep. 30:4-31:9.

¹⁸ Aff. of Counsel, Ex. 27, Youngman Dep. 42:10-43:5, 44:6-45:11; Aff. of Counsel, Ex. 26, Ribi Dep. 59:24-62:5; Aff. of Counsel, Ex. 29, Lamb Dep. 26:13-27:20, 30:1-32:2.

¹⁹ Aff. of Counsel, Ex. 26, Ribi Dep. 156:3-8; Aff. of Counsel, Ex. 27, Youngman Dep. 42:10-43:5, 44:8-45:11.

²⁰ Aff. of Counsel, Ex. 8.

²¹ Aff. of Counsel, Ex. 9; Aff. of Counsel, Ex. 24, Willich Dep. 76:5-77:24.

City of Sun Valley, and Adam King. Kirtlan Naylor was hired and appeared as legal counsel for Sun Valley and Mr. King.²² Mr. Naylor also associated as counsel of record for Mr. Ribí, individually.

13. On November 30, 2011, the Idaho Mountain Express newspaper reported that: “An internal investigation of Sun Valley City Administrator Sharon Hammer’s ‘possible misuse of public funds and equipment’ was the cause of her being placed on administrative leave two weeks ago.”²³ The article quoted the AFFIDAVIT OF MR. RIBI IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER that he had filed in the 2011 IPPEA Case.²⁴ The article also quoted Mr. Ribí’s Affidavit as averring that: “[T]he Mayor and Council had reason to believe that the Plaintiff may have committed serious misconduct, including possible criminal violations of statutes dealing with the misuse of public funds and falsification of public records.”²⁵

14. Mr. Ribí was not authorized by the Sun Valley City Council to disclose to the public what took place in Executive Sessions.²⁶

15. On December 5, 2011, Ms. Hammer amended her Complaint in the 2011 IPPEA Case to add Mr. Youngman as a defendant.

16. On December 15, 2011, Ms. Hammer served on Sun Valley a notice of tort claim against Sun Valley, Mr. Ribí, Mr. Youngman, Mr. King, and Ms. Frostenson. On December 28, 2011, Ms. Hammer served a revised notice of tort claim on Sun Valley, adding Mr. Naylor; Patricia Latham Ball, supposed independent investigator hired by Sun Valley to conduct the

²² Mr. Naylor was only retained to represent Sun Valley in the IPPEA Case, not to participate in Ms. Ball’s investigation. Aff. of Counsel, Ex. 24, Willich Dep. 52:23–53:19.

²³ Aff. of Counsel, Ex. 10.

²⁴ Aff. of Counsel, Ex. 26, Ribí Dep. 114:2–144:13.

²⁵ Aff. of Counsel, Exs. 10 and 11.

²⁶ Aff. of Counsel, Ex. 27, Youngman Dep. 79:8–15, 80:1–11; Aff. of Counsel, Ex. 29, Lamb Dep. 53:3–55:1; Aff. of Counsel, Ex. 26, Ribí Dep., 116:5–13, 119:19–123:13.

investigations; and now Mayor-Elect Briscoe as potential defendants.²⁷

17. On or about December 16, 2011, Ms. Hammer filed a charge of discrimination against Sun Valley and Mr. Ribi with the Idaho Human Rights Commission.²⁸

18. On December 23, 2011, Mayor Willich requested that Ms. Hammer return from administrative leave on December 27, 2011, and assume her normal duties as City Administrator and paid on-call firefighter/EMT.²⁹

19. On December 29, 2011, Mayor Willich advised Ms. Hammer that he considered Ms. Ball's investigation into the allegations of misconduct against Ms. Hammer to be closed – having been inconclusive of any finding of misconduct.³⁰

20. On January 3, 2012, DeWayne Briscoe was sworn in as Sun Valley Mayor. The 2011 IPPEA Case was still pending with the Blaine County District Court when Mr. Briscoe became Mayor of Sun Valley.

21. On January 4, 2012, Mayor Briscoe provided Ms. Hammer with written Notice of Paid Administrative Leave Pending Investigation.³¹ The Notice directed that: **“This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations.”**³²

22. Yet, two days later, on January 6, 2012, a statement by Mayor Briscoe was published by the Idaho Mountain Express newspaper that: “Sun Valley City Administrator Sharon Hammer was placed back on paid administrative leave Thursday.”³³

²⁷ Aff. of Counsel, Ex. 12.

²⁸ Aff. of Counsel, Ex. 13.

²⁹ Aff. of Counsel, Ex. 14; Aff. of Counsel, Ex. 29, Lamb Dep. 58:2-16.

³⁰ Aff. of Counsel, Ex. 15.

³¹ Aff. of Counsel, Ex. 16.

³² Aff. of Counsel, Ex. 16, Bates No. HAMMER 000247 (emphasis original).

³³ Aff. of Counsel, Ex. 18 (emphasis original).

23. And, five days later, on January 9, 2012, Mayor Briscoe filed the AFFIDAVIT OF DEWAYNE BRISCOE in the 2011 IPPEA Case stating purported reasons why he placed Ms. Hammer back on administrative leave on January 4, 2012.³⁴

24. The January 4, 2012 Notice also stated that: **“In the event the investigation indicates personnel action is warranted for your conduct or for cause, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.”**³⁵

25. Ms. Hammer never received evidence of or explanation regarding the allegations against her, or an opportunity to respond to the allegations or any “initial determinations” that may have been made.³⁶

26. Also on January 4, 2012, Mayor Briscoe provided Ms. Hammer with a Notice of Administrative Investigation; Order to Participate in Interview Process and Advice of Rights.³⁷

27. On January 16, 2012, Sun Valley issued a disparaging press release, which was also advertised in the Idaho Mountain Express, regarding Ms. Hammer’s voluntary dismissal of the 2011 IPPEA Case.³⁸ In the press release, Sun Valley stated, in part: “[T]he City’s investigative report ... has been turned over to the Blaine County Prosecuting Attorney for an independent review of possible criminal conduct.”³⁹

28. On January 19, 2012, during a regular Sun Valley City Council meeting, Mayor Briscoe asked for a motion on the issue of Ms. Hammer’s termination, and Councilman Franz

³⁴ Aff. of Counsel, Ex. 19.

³⁵ Aff. of Counsel, Ex. 16, Bates No. HAMMER 000248 (emphasis original).

³⁶ Aff. of Counsel, Ex. 25, Briscoe Dep. 158:15–165:24.

³⁷ Aff. of Counsel, Ex. 17.

³⁸ Aff. of Counsel, Ex. 20.

³⁹ Aff. of Counsel, Ex. 20.

Suhadolnik made the motion.⁴⁰ Councilman Suhadolnik's reasoning for making the motion was that Councilmembers Ribí and Youngman were likely "tainted" because Ms. Hammer had brought complaints and legal actions against them.⁴¹

29. Before Ms. Hammer's termination on January 19, 2012, Sun Valley had ordered and was planning to publish a colored advertisement with the Idaho Mountain Express newspaper announcing Ms. Hammer's immediate termination.⁴²

30. Pursuant to Section 3 of the Employment Agreement, purportedly terminating Ms. Hammer without cause required the City to make a severance payment to Ms. Hammer, under the following specific terms:

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").⁴³

⁴⁰ Aff. of S. Hammer, ¶ 15; Aff. of Counsel, Ex. 28, Suhadolnik Dep. 55:19-58:11; Aff. of Counsel, Ex. 25, Briscoe Dep. 152:20-153:5.

⁴¹ Aff. of Counsel, Ex. 29, Suhadolnik Dep. 56:5-9, 57:18-58:6; *see also* Aff. of Counsel, Ex. 24, Willich Dep. 36:2-25, 55:2-5; Aff. of Counsel, Ex. 26, Ribí Dep. 143:22-144:13, 156:3-157:4, 165:7-22.

⁴² Aff. of Counsel, Exs. 21 and 22; Aff. of Counsel, Ex. 25, Briscoe Dep. 170:22-172:8.

⁴³ Aff. of Hammer, Ex. 1, § 3.A.

31. Ms. Hammer provided Sun Valley with the Supplemental Release Pursuant to City Administrator Employment Agreement on January 23, 2012 ("Supplemental Release").⁴⁴

32. Leading up to the Supplemental Release, Ms. Hammer's attorney, James Donoval, repeatedly advised Sun Valley that Ms. Hammer would not waive or release any non-contract claim, or type of claim other than those arising from the severance package.⁴⁵

33. The intent of Ms. Hammer's release extended only to claims arising out of any dispute related to the severance package.⁴⁶ Given Ms. Hammer's intent of the Supplemental Release, it succinctly stated:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.⁴⁷

34. Ms. Hammer was subsequently paid all amounts of severance due to her under the Employment Agreement.

35. In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, Mayor Willich was authorized and had the supporting unanimous vote of the City Council, to act for and on behalf of Sun Valley.⁴⁸

36. In June 2008, when the Employment Agreement was entered into, there was no intent by either party that Ms. Hammer was waiving or would waive any constitutional or statutory rights, or claims of discrimination, harassment, retaliation, or tort.⁴⁹

⁴⁴ Aff. of Hammer, ¶ 16, Ex. 2; AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Aff. of Donoval"), filed contemporaneously herewith, ¶ 7.

⁴⁵ Aff. of Donoval, ¶ 6, Exs. 1-3.

⁴⁶ Aff. of Hammer, ¶¶ 4-5, 7-11, 16-17, 19-22; Aff. of Donoval, ¶¶ 5-9; *see* Aff. of Willich, ¶¶ 3, 5-9.

⁴⁷ Aff. of Hammer, Ex. 2.

⁴⁸ Aff. of Willich, ¶¶ 2-3, 5.

⁴⁹ Aff. of Willich, ¶¶ 2-9; Aff. of Hammer, ¶¶ 4-11, 16-22, Ex. 2.

37. In January 2012, when Ms. Hammer signed the Supplemental Release, she had no intent to relinquish any constitutional or statutory rights or waive any of the claims alleged in the present IPPEA case.⁵⁰

III. STANDARD OF REVIEW

Summary judgment in favor of Plaintiffs must be rendered by the Court “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). “A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” I.R.C.P. 56(c). In making this determination, “the Court liberally construes all facts in favor of the nonmoving party and draws all reasonable inferences from the facts in favor of the nonmoving party.” *Camp Easton Forever, Inc. v. Inland NW Council BSA*, 332 P.3d 805, 809 (Idaho 2014) (citing *Hill v. Hill*, 140 Idaho 812, 813, 102 P.3d 1131, 1132 (2004)). The trial court is permitted flexibility in crafting the form of relief granted on summary judgment so long as the non-moving party is on notice that the court is considering the claim. *Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct. App. 1991) (citing *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984); *see also* I.R.C.P. 56(a-d). However, “there is no genuine issue of material fact as to issues admitted by the parties in their pleadings.” *Esser Elec. v. Lost River Ballistics Tech., Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008). Summary judgment should be denied “if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence.” *Id.*

⁵⁰ Aff. of Hammer, ¶¶ 4-11, 16-22, Ex. 2; Aff. of Donoval, ¶¶ 6-9.

The party opposing the summary judgment motion “may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” I.R.C.P. 56(e). “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there is no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). “If no disputed issues of material fact exist, then only a question of law remains.” *Camp Easton Forever, Inc.*, 332 P.3d at 809 (citing *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002)).

“A nonmoving defendant has the burden of supporting a claimed affirmative defense on a motion for summary judgment.” *Chandler v. Hayden*, 147 Idaho 765, 771, 215 P.3d 485, 491 (2009); *see also* I.R.C.P. 56(e). The United States Supreme Court has found “no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent’s claim.” *Chandler*, 147 Idaho at 771, 215 P.3d at 491 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (emphasis original in *Celotex*)). Because Sun Valley, as the nonmoving party in summary judgment, bears the burden of proof on the issue of its affirmative defenses at trial, it must set forth specific facts showing that there is a genuine issue for trial, and Ms. Hammer, as the moving party, is not required to negate Sun Valley’s affirmative defenses. *Chandler*, 147 Idaho at 769-71, 215 P.3d at 489-91.

IV. ARGUMENT

Sun Valley’s Fifth and Sixth Affirmative Defenses assert that Ms. Hammer waived or released any and all claims that she may have had against Sun Valley or any of its employees or elected officials pursuant to the contract imposed upon her by Sun Valley. However, the public

policy underlying the IPPEA prohibits any such waiver or release. And, even if Ms. Hammer, as a potential IPPEA plaintiff, could release or waive her right to prosecute statutory violations, such a release requires a showing of voluntary intent. Sun Valley cannot show any intent by Ms. Hammer to waive any statutory right or protection afforded by the IPPEA.⁵¹

The State of Idaho has seen fit to protect government employees and define the legality of a government employer's response when informed of allegations of misconduct by one employee against another. The declared intent of the IPPEA is that:

The legislature hereby finds, determines and declares that government constitutes a large proportion of the Idaho work force and that it is beneficial to the citizens of this state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.

I.C. § 6-2101. This statement of intent is Idaho's declaration of public policy with respect to the protection of "whistleblower" employees. "Public policy may be found and set forth in the statutes, judicial decisions or the constitution." *Jesse v. Lindsley*, 146 Idaho 70, 75, 233 P.3d 1, 6 (2008) (quotation omitted). Sun Valley cannot relieve itself of liability arising from its, or its employee's, violations of the IPPEA by conditioning payment of Ms. Hammer's severance payment on her assent to a contractual exculpatory clause. Any such alleged waiver or release would be void as against the public policy of this State. "Whether a contract violates public policy is a question of law for the court to determine from all the facts and circumstances of each case." *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citation omitted).

Sun Valley is prohibited from contracting its way out of liability arising from violations of the IPPEA because such liability has been prescribed to it by Idaho's legislature. "[W]e do

⁵¹ Statement of Undisputed Material Facts ("Stmnt of Facts"), ¶¶ 31-37.

hold that where the legislature has addressed the rights and duties pertaining to personal injuries arising out of the relationship between two groups, *i.e.*, employers/employees ..., and has granted limited liability to one group in exchange for adherence to specific duties, then such duties become a ‘public duty’ within the exception to the general rule validating exculpatory contracts.” *Lee v. Sun Valley Co.*, 107 Idaho 976, 979, 695 P.2d 361, 364 (1984) (emphasis added). Under the IPPEA, government employers are subject to liability for enumerated relief when an employee proves by a preponderance of the evidence that the employer took an adverse action against the employee because the employee engaged in an activity that is protected by the Act. I.C. §§ 6-2104, 6-2106.

Prior to *Lee*, “the general rule ... that ‘express agreements exempting one of the parties [from liability] are to be sustained’ is subject to exceptions where: ‘(1) one party is at an obvious disadvantage in bargaining power; (2) a public duty is involved (public utility companies, common carriers).” 107 Idaho at 978, 695 P.2d at 363 (quoting *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499-500, 465 P.2d 107, 110-11 (1970)). The Court in *Lee* clarified the public duty exemption and affirmed that, in Idaho, “[certain] statutory rights and duties may not be waived or exempted by contract.” 107 Idaho at 979, 695 P.2d at 364 (citations omitted). And, “[e]ven though no express provisions be contained in the ... statute, it would seem that any attempt to nullify or limit the operation of law must be held to be invalid as being against public policy.” *Id.* (quoting 81 Am.Jur.2d Workmen’s Comp. § 51, p. 741 (1976)). The IPPEA falls within the class of statutory rights and duties that cannot be waived or released by contract because it pertains to injuries arising out of the relationship between government employers and their employees – a pairing specifically identified in *Lee*’s holding. *Id.*

Beginning in October 2009, Ms. Hammer made numerous complaints to Mayor Willich and City Attorney King regarding Councilman Ribí's acts of harassment, hostility and misconduct against her.⁵² Mr. Ribí's harassing conduct violated Section 7.5 of the City of Sun Valley Personnel Policies & Procedures Manual.⁵³ Ms. Hammer's acts of reporting Mr. Ribí's violative conduct, and her subsequent, related IHRC and court filings were all protected activities under the IPPEA.⁵⁴ I.C. § 6-2104. Prior to her termination, Sun Valley made public statements about Ms. Hammer being placed on administrative leave, and that she was being investigated for criminal misconduct.⁵⁵

On January 19, 2012, Mayor Briscoe, with the majority vote of the Sun Valley City Council, terminated Ms. Hammer from her position as City Administrator.⁵⁶ Sun Valley **purportedly** terminated Ms. Hammer "without cause."⁵⁷ Pursuant to Section 3 of her Employment Agreement, termination without cause required the City to make a severance payment to Ms. Hammer, under the following terms:

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly,

⁵² Stmt of Facts, ¶ 4.

⁵³ Aff. of Counsel, Ex. 3, § 7.5.

⁵⁴ Stmt of Facts, ¶¶ 4, 12, 15-17, 20.

⁵⁵ Stmt of Facts, ¶¶ 13-14, 21-29.

⁵⁶ Stmt of Facts, ¶ 28.

⁵⁷ Stmt of Facts, ¶¶ 28-30.

Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").⁵⁸

Following a series of conversations between Mr. Donoval, as Ms. Hammer's attorney, and Sun Valley's attorney, Mr. Naylor, Ms. Hammer provided Sun Valley with the Supplemental Release on January 23, 2012.⁵⁹ Leading up to the Supplemental Release, Mr. Donoval repeatedly advised Sun Valley that Ms. Hammer would not waive or release any claim other than those arising from the severance package (*i.e.*, she would only waive contract and wage claims).⁶⁰ The intent of Ms. Hammer's release extended only to claims arising out of a dispute related to the severance package.⁶¹ In line with Ms. Hammer's position regarding the scope of Section 3.A. of the Employment Agreement, the Supplemental Release succinctly stated:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.⁶²

Ms. Hammer was subsequently paid all amounts of severance due to her under the contract.⁶³

In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, Mayor Willich was authorized, and had the supporting unanimous vote of the City Council, to hire Ms. Hammer.⁶⁴ At the time the Employment Agreement was entered, there was

⁵⁸ Aff. of Hammer, Ex. 1, § 3.A (emphasis original).

⁵⁹ Stmt of Facts, ¶¶ 31-32.

⁶⁰ Stmt of Facts, ¶ 32.

⁶¹ Stmt of Facts, ¶¶ 31-37.

⁶² Aff. of Hammer, Ex. 2.

⁶³ Stmt of Facts, ¶ 34.

⁶⁴ Stmt of Facts, ¶¶ 35-37.

no intent by either party that Ms. Hammer was or would waive or release any statutory right or protection under the IPPEA.⁶⁵ And, when Ms. Hammer signed the Supplemental Release, she had absolutely no intent to release any statutory rights or waive any of the claims alleged in the present case.⁶⁶

Even if Sun Valley's extension of Section 3.A. of the Employment Agreement, to relieve it of liability imposed by the IPPEA, did not violate public policy, it would still fail. **"Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue."** *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citing *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178, 595 P.2d 709, 712 (1979)). The language absolving Sun Valley of liability in Section 3 of the Employment Agreement "for any and all claims for damages of any kind arising from a termination without cause" is ambiguous and simply too broad.⁶⁷ See *Jesse*, 146 Idaho at 76-77, 233 P.3d at 7-8 (finding exculpatory clause in lease too broad to enforce). Neither the Supplemental Release nor the Employment Agreement cites to, acknowledges, or even infers waiver or release of her statutory rights under the IPPEA, or Sun Valley's liability for violations thereof.⁶⁸ No language within either document purported to waive the right to sue conferred upon Ms. Hammer by the IPPEA.⁶⁹ I.C. § 6-2105. Even if she could, Ms. Hammer did not waive or release any claims or relief under the IPPEA.⁷⁰

The Employment Agreement and Ms. Hammer's Supplemental Release cannot absolve Sun Valley of a possible violation of the IPPEA. *Lee*, 107 Idaho 979-80, 695 P.2d 364-65. "It is

⁶⁵ Stmt of Facts, ¶ 36.

⁶⁶ Stmt of Facts, ¶ 37.

⁶⁷ Aff. of Hammer, Ex. 1, § 3.A.

⁶⁸ Aff. of Hammer, Exs. 1 and 2.

⁶⁹ Aff. of Hammer, Exs. 1 and 2.

⁷⁰ Stmt of Facts, ¶¶ 32-37.

a well-settled general doctrine that the law will not sustain a covenant of immunity which protects against fraud or relieves one of a duty imposed by law for the public benefit.” *Lee*, 107 Idaho at 982, 695 P.2d at 367 (Bistline, J., dissenting) (quoting 17 Am.Jur.2d Contracts § 188, p. 557) (emphasis added in *Lee*)). The Court should find as a matter of law that Ms. Hammer did not and could not waive or release any right or protection provided under the IPPEA, and dismiss Sun Valley’s Fifth and Sixth Affirmative Defenses.

V. CONCLUSION

For the foregoing reasons, Plaintiff Sharon R. Hammer respectfully requests that the Court grant her Motion for Summary Judgment in its entirety, thereby entering judgment as a matter of law dismissing Defendant City of Sun Valley’s Fifth and Sixth Affirmative Defenses and finding that Ms. Hammer did not waive or release any right, privilege, or damage under the Idaho Protection of Public Employees Act.

DATED this 17th day of November, 2014.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

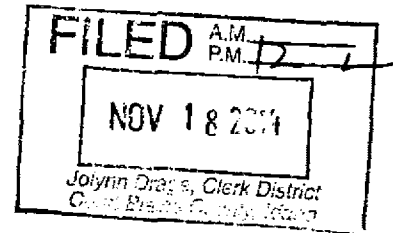


ERIC B. SWARTZ
JOY M. VEGA

ORIGINAL

Eric B. Swartz, ISB #6396
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Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF SHARON R.
HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

I, Sharon R. Hammer, being first duly sworn upon oath, depose and state as follows:

1. I am the named Plaintiff in the above-captioned matter.
2. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

3. As a result of the City of Sun Valley's ("City" or "Sun Valley") national search of candidates, I was chosen, and ultimately appointed, to fill the position of City Administrator for Sun Valley.

4. In May of 2008, Sun Valley Mayor Wayne Willich provided me with a copy of the City Administrator Employment Agreement ("Employment Agreement"). Attached hereto as Exhibit 1 is a true and correct copy of the Employment Agreement that I entered into with the City, dated June 1, 2008.

5. The only Sun Valley official or employee that I recollect discussing any substantive issues regarding the Employment Agreement with was Mayor Willich.

6. It was my understanding from speaking with Mayor Willich that the Employment Agreement was drafted by then-Sun Valley City Attorney Rand Peebles. I understood from speaking with Mayor Willich that Mr. Peebles had used the same form for my Employment Agreement as that used for the employment agreement between the City and former Sun Valley City Administrator, Virginia Egger.

7. At the time I signed the Employment Agreement I understood from speaking with Mayor Willich that the provisions stated at Section 3.A., which provided that I would "waive [my] right to bring a claim of any kind for damages against [Sun Valley] arising from a termination **without cause**" only barred me from claims related to the severance package, including contractual salary or benefit damages that I may be entitled to. Exhibit 1, § 3.A. (emphasis original).

8. At the time I entered into the Employment Agreement I did not understand or intend that Section 3.A. of the Employment Agreement would waive any future non-contract severance claims I may have against Sun Valley or its employees and/or officials.

9. At the time I entered into the Employment Agreement I had no intent to waive or release any rights or protections afforded to me under the Idaho Protection of Public Employees Act, codified at Idaho Code, Title 6, Chapter 21 ("IPPEA").

10. At the time I entered into the Employment Agreement I had no intent to waive or release any legal claim that I may have arising from any state or federal statute, any state or federal constitutional right, or any common law or tort claim not arising from the severance package.

11. At no time prior to or after signing the Employment Agreement did Mayor Willich tell me that the intent of Section 3.A. was a blanket waiver of every legal right or claim imaginable, whether accrued or unaccrued.

12. From June 2008 until January 19, 2012, I was employed as the City Administrator for the City of Sun Valley, Idaho.

13. Beginning in or about October 2009 through at least September 2011, I made multiple complaints to Mayor Willich and City Attorney Adam King regarding City Councilman Nils Ribi's acts of harassment and hostility against me. My numerous complaints rendered no change in Mr. Ribi's behavior. He was consistently hostile and abusive to me.

14. On November 11, 2011, I was aware that City Councilmen Nils Ribi, DeWayne Briscoe, and Robert Youngman were holding a Special Council Meeting. After that meeting had adjourned, Mayor Willich and Mr. King came to my office and told me that each of the Councilmen had demanded my resignation as City Administrator because of undefined allegations of misconduct lodged against me by City Treasurer Michelle Frostenson and City Clerk Kelly Ek. I refused to resign.

15. On January 19, 2012, following the unanimous vote of the Sun Valley City Council, newly-seated Mayor DeWayne Briscoe terminated my employment with the City. My termination was purportedly "without cause" pursuant to Section 3.A. of the Employment Agreement.

16. On January 23, 2012, I signed a document entitled Supplemental Release Pursuant to City Administrator Employment Agreement, which merely referred to Section 3.A. of the Employment Agreement ("Supplemental Release"). The Supplemental Release was prepared by James R. Donoval, my husband and then-attorney. Attached hereto as Exhibit 2 is a true and correct copy of the Supplemental Release.

17. At the time I signed the Supplemental Release, I had endured over two years of harassment and verbal and emotional abuse by Mr. Ribí. During those two years, I had repeatedly complained to Mayor Willich, City Attorney Adam King, and other officials regarding Mr. Ribí's treatment of me.

18. At the time I signed the Supplemental Release, I was faced with two choices: 1) sign a release of claims as required by my Employment Agreement and receive the stated severance pay, or 2) refuse to sign a release of claims and forego payment of any severance package. In order to secure my immediate financial security, I was forced to sign a release of claims that was acceptable to the City.


19. The language of the Supplemental Release purposely and intentionally does not include any mention that I was releasing any non-contract severance benefits.

20. The Supplemental Release purposely does not include any waiver or release of any state or federal statutory claim, any constitutional claim, or any other common law or tort claims that I may have against Sun Valley, its officials or employees.

21. By signing the Supplemental Release I did not intend to, nor did I knowingly or voluntarily waive or release any non-contract claims, such as any claims arising from the IPPEA.

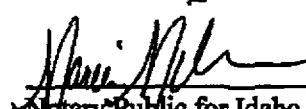
22. If I knew that the Supplemental Release was intended to cover claims other than those related to amounts owed on severance, I would not have signed it.

FURTHER AFFIANT SAYETH NAUGHT.

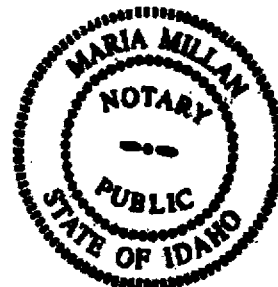


SHARON R. HAMMER

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.



Notary Public for Idaho
My Commission expires 9/24/20



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

CONFIDENTIAL

ORIGINAL

**CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT**

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, without cause, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "cause", then Employer shall not be obligated to make any severance payment to Employee. "Cause" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee shall not be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, AND reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | |
|------------------------------|---|
| (1) Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) Employee:
[Temporary] | 360 W. Illinois St
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion

thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Sun Valley has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, as of the date and year first above written.

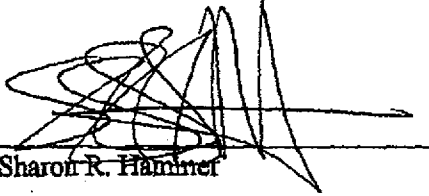
EMPLOYER

EMPLOYEE

CITY OF SUN VALLEY, a
municipal corporation

By:


Wayne Willich, Mayor


Sharon R. Hammer

ATTEST:

City Clerk

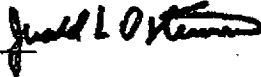
KELLY EK by: 

EXHIBIT 2
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000303

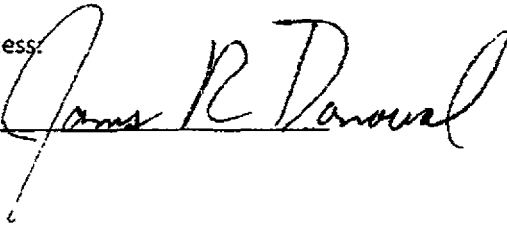
SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

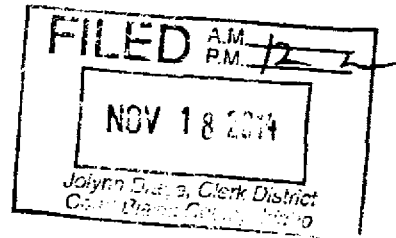
Witness:



HAMMER 000303

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF JAMES R.
DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

I, James R. Donoval, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. I am married to Sharon R. Hammer, who from June 2008 to January 19, 2012, was the City Administrator of the City of Sun Valley, Idaho ("Sun Valley").

3. I am a licensed attorney in Idaho, having been sworn-in to the Idaho State Bar in October 2009, after having practiced law in Illinois since 1988.

4. Beginning in November 2011, I have represented Ms. Hammer in various matters associated with legal disputes between her, Sun Valley, and various Sun Valley officials and employees.

5. On January 19, 2012, Ms. Hammer was terminated from her employment with Sun Valley, purportedly "without cause" pursuant to Section 3.A. of her City Administrator Employment Agreement with the City ("Employment Agreement"). See Exhibit 1 to Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment, filed contemporaneously herewith.


6. Prior to Ms. Hammer's termination, I sent emails and at least one letter to Kirtlan Naylor, attorney for Sun Valley, regarding Sun Valley's intentions related to Ms. Hammer and the impact of Section 3.A. of her Employment Agreement. Attached hereto as Exhibit 1 is a true and correct copy of an email I sent to Mr. Naylor on January 13, 2012, specifically clarifying that, if Sun Valley terminated Ms. Hammer pursuant to the "without cause" provision of the Employment Agreement, "her contract does not require her to waive any tort or any other non contract claims she may have with the City." Attached hereto as Exhibit 2 is a true and correct copy of an email I sent to Mr. Naylor on January 14, 2012, that specifically stated that Ms. Hammer "has a property interest in her employment which we will immediately seek to enforce." Attached hereto as Exhibit 3 is a true and correct copy of a letter I sent to Mr. Naylor on January 18, 2012, again specifically stating that Ms. Hammer would not waive any non-contract severance claims.

7. On January 23, 2012, Ms. Hammer signed a document entitled Supplemental Release Pursuant to City Administrator Employment Agreement ("Supplemental Release"), which was prepared by me and which merely referred to Section 3.A. of the Employment Agreement. See Exhibit 2 to Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment.

8. The Supplemental Release purposely omitted any reference to a release of any non-contract severance or benefits claims. In drafting the Supplemental Release, neither I nor Ms. Hammer intended that she would be waiving or releasing any claim other than claims for severance amounts or benefits beyond the severance package that Sun Valley agreed to pay her.s

9. The Supplemental Release purposely does not include any release or waiver of any claim, right or protection Ms. Hammer has under any state or federal statute, any constitutional right or protection, or any other common law or tort claims against Sun Valley, its officials or employees. The Supplemental Release purposely does not include any waiver or release of any rights or protections afforded to Ms. Hammer under the Idaho Protection of Public Employees Act, codified at Idaho Code, Title 6, Chapter 21 ("IPPEA").

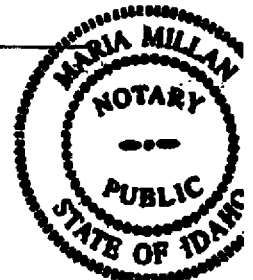
FURTHER AFFIANT SAYETH NAUGHT.


JAMES R. DONOVAL

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.

Notary Public for Idaho

My Commission expires 9/24/20



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000263

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhales.com>
Subject: Re: City Administrator Contract
Date: Fri, Jan 13, 2012 10:14 am

Kirt:

If the City is going to terminate Sharon without cause her contract does not require her to waive any tort or any other non contract claims she may have with the City. So if the City is going to terminate her without cause, we should work on a separation agreement that has the correct waiver language in it, and get it over with.

If the City is going to try to terminate her with cause, especially without any hearings or anything, you know that is going to face continued litigation regarding that issue alone.

As to your other email, Sharon and I have given you several settlement offers that you have dismissed outright, especially during Mayor Willich's tenure, and I have asked on several occasions to sit with you and your client and you have refused - so we did not believe we were incorrect in filing the pleading.

I would much rather have you provide me the settlement terms rather than the other way around, as thus far you have rejected anything we have put before you and have not countered. Please note that if you want a settlement of all matters, including any tort or IPPEA claims Sharon has, we are expecting that it also includes a dismissal of Mr. Ribi's and Ms. Ribi's claims against me. And regardless of the language, we thought that dismissing the suit first was a good faith effort to settle the issues.

Finally Kirt, there have been assertions all over the place of everyone doing bad acts. I am sorry for that. And you have probably not even been privy to some of the things that I have been subject to from Mr. Roark. However, the community here thinks this is a travesty and a waste of money and not what governments are supposed to be doing. However, if we are going to get to some resolution to this, it needs to give Sharon back her reputation. No one is going to win on every issue and we need to discuss the matters to get it resolved. I don't care if you record our conversations. But as much as we do not see eye to eye - we both need to get to some common ground otherwise this is going to go on forever.

Best Regards

JIM

Please call me when you get this to start working on where we are going..

-----Original Message-----

From: Kirtlan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Sent: Thu, Jan 12, 2012 7:32 pm
Subject: RE: City Administrator Contract

You may make any offer in writing to me. And I will communicate it to my clients.

Kirtlan G. Naylor

Direct 208 947-2070



NAYLOR & HALES, P.C.

ATTORNEYS AT LAW, SUITE 400, SEASIDE, ID 83429

This email is a confidential communication.

HAMMER 000263

EXHIBIT 2
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000272

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhales.com>
Subject: Re: Resolution follow up
Date: Sat, Jan 14, 2012 7:30 am

The Nils Ribi law suit is not an issue - I will fight that myself.

If the City Council terminates Sharon on Thursday, we will be in Court immediately to see whether your theory of no contract extension flies. And regardless of whether you terminate her "without cause" - she has a property interest in her employment which we will immediately seek to enforce. And of course I will immediately re-file the IPPEA claims. Is that what you really want - to continue litigation over this?

JIM

-----Original Message-----

From: Kirtlan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Sent: Fri, Jan 13, 2012 5:32 pm
Subject: Resolution follow up

Jim,

I should tell you that since my earlier emails, I have had an opportunity to discuss this with my clients, so any of the ideas I floated earlier are withdrawn, even though I had no specific authority.

I can tell you that Nils Ribi's lawsuit is separate from and will not be linked with any resolution of the all the Sun Valley lawsuits (including against city officials).

Also, we do not agree that the language in the employment agreement is limited in releasing just contract claims. In any event, unless you can propose something more beneficial to the City than the terms of the Employment Agreement, then the City might as well proceed to terminate Sharon without cause. We are confident that the contract, which she drafted by reference with the extension will be interpreted against the drafter.

So, at this time, the ball is in your court to propose a reasonable offer.

I look forward to hearing from you.

Kirtlan G. Naylor

Direct 208 947-2070



NAYLOR & HALES, P.C.

950 WEST BANNICK ST., SUITE 610 BOISE, ID 83702

This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

EXHIBIT 3
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3
TO AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

JAMES R. DONOVAL

Attorney At Law

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com

January 18, 2012

Mr. Kirtlan Naylor
950 W. Bannock St., Suite 610
Boise, ID 83702

Re: Sharon R. Hammer Contract And Termination

Dear Mr. Naylor:

I want to reiterate and add to some of the things that we mentioned in our just completed discussion.

First, should the City Of Sun Valley seek to terminate Ms. Hammer's contract without cause, and pay her the severance payment described therein, the language related to such states : "The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims of damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City Of Sun Valley." Please note that this language was drafted by then Sun Valley City Attorney Rand Peebles. As I have stated, the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribi and several other claims, do not arise "from a termination", they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement. So as I have stated, if the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.

I also want to remind you that on at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), Ms. Hammer has provided notice that Ms. Frostenson has

shorted her retirement account by \$1,642 and that Ms. Frostenson has failed to accrue 120 hours of sabbatical vacation Ms. Hammer was entitled to (and was charged for) in June of 2011 equaling \$6,832. Please ensure that if the City Of Sun Valley terminates Ms. Hammer that those errors are corrected as part of Ms. Hammer's final termination payment.

If the City Of Sun Valley terminates Ms. Hammer with cause, or asserts that the contract is invalid or expired, then of course she does not waive any claims of any sort, including in regards to the contract itself.

Again, I want to remind you that should Ms. Hammer be required to litigate any matters related to Ms. Hammer's severance, then there is the potential that she would be entitled to treble damages and attorney's fees for the unpaid amounts pursuant to Idaho Statutes 45-615. Also, please note that should Ms. Hammer be terminated, she is making demand for payment of all compensation due within forty eight hours (48) as is required by Idaho Statutes 45-606.

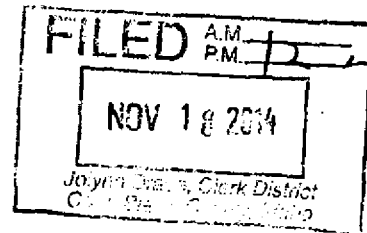
Very Truly Yours,


JAMES R. DONOVAL

Jd:jd

Cc: S. Hammer

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
P.O. Box 7808
Boise, ID 83707-7808
Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com
Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF WAYNE
WILlich IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)

: ss.

County of Blaine)

I, Wayne Willich, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. From January of 2008 until January 3, 2012, I was the duly elected Mayor of Sun Valley, Idaho.

AFFIDAVIT OF WAYNE WILlich IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT - 1

A handwritten signature or set of initials, possibly "WIL", written in dark ink.

3. In June of 2008, the City of Sun Valley entered into a written City Administrator Employment Agreement ("Employment Agreement") with Sharon R. Hammer.

4. The Employment Agreement was drafted by then-Sun Valley City Attorney Rand Peebles. The Employment Agreement was based on the contract that had been entered into between former Sun Valley City Administrator Virginia Egger and Sun Valley.

5. I was the sole Sun Valley official or representative who discussed any terms of the Employment Agreement with Ms. Hammer.

6. At the time I entered into the Employment Agreement with Ms. Hammer, there was no discussion related to whether Section 3, Paragraph A, waived any statutory rights, potential retaliation claims, or other non-contract claims should the Employment Agreement be terminated.

7. At the time I entered into the Employment Agreement with Ms. Hammer, there was no intent on my part, as Sun Valley Mayor, that Ms. Hammer waive any statutory rights or future discrimination, harassment, retaliation or other non-contract claims if the City of Sun Valley chose to ever terminate the Employment Agreement pursuant to the "without cause" provisions of Section 3, Paragraph A.

8. The waiver provision of Section 3, Paragraph A, had been carried over as one of the provisions that had been included in Ms. Egger's contract.

9. Any assertion by the City of Sun Valley that Ms. Hammer intended to or agreed to waive any statutory right, discrimination claim, harassment claim, retaliation claim, or tort claim, are not based on mine or Ms. Hammer's discussions or understanding of the Employment Agreement when it was entered into in June 2008.



10. During my time as Mayor, Ms. Hammer, as City Administrator, reported solely and directly to me as the Mayor of Sun Valley.

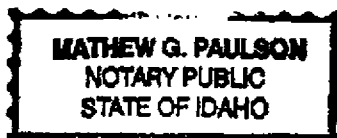
11. Beginning in ~~the~~ 2009 through the autumn of 2011, Ms. Hammer repeatedly reported to me that Councilman Nils Ribi had been hostile to her and had harassed her. A common cause of Councilman Ribi's hostile behavior seemed to be because Ms. Hammer had told Councilman Ribi that she took direction from me and that he was not authorized to give Ms. Hammer any directions without my approval.


12. In particular, it is my opinion that Councilman Ribi treated Ms. Hammer improperly and in a hostile manner, when she told him that she would follow my direction and not his in regards to Sun Valley-related matters.

FURTHER AFFIANT SAYETH NAUGHT.


WAYNE WILlich

SUBSCRIBED AND SWORN to before me this 17th day of November, 2014.




Notary Public for Idaho
My Commission expires April 4, 2018



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

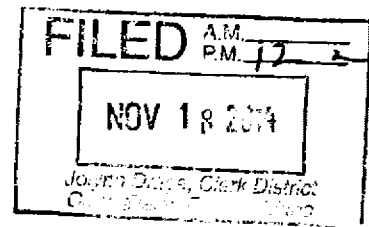
☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
1673 W. Shoreline Drive, Suite 200 [83702]
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Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com



Attorneys for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF COUNSEL IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
: ss.
County of Ada)

I, Joy M. Vega, being first duly sworn upon oath, depose and state as follows:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the State of Idaho.

2. I am counsel of record for Plaintiff Sharon R. Hammer in the above action.

3. Attached hereto as Exhibit 1 is a true and correct copy of the September 17, 2009 City Administrator Employment Agreement Extension between Ms. Hammer and City of Sun Valley ("Sun Valley").

4. Attached hereto as Exhibit 2 is a true and correct copy of email exchanges between Ms. Hammer and Wayne Willich dated December 28, 2011–December 29, 2011, as produced in discovery.

5. Attached hereto as Exhibit 3 is a true and correct copy of the City of Sun Valley Personnel Policies & Procedures Manual.

6. Attached hereto as Exhibit 4 is a true and correct copy of the text message from Michelle Frostenson to Nils Ribí dated November 10, 2011, as produced by Defendants.

7. Attached hereto as Exhibit 5 is a true and correct copy of the email exchange between Michelle Frostenson and Adam King dated November 15, 2011–November 16, 2011, as produced in discovery.

8. Attached hereto as Exhibit 6 is a true and correct copy of the email from Kelly Ek to Adam King dated November 15, 2011, as produced in discovery.

9. Attached hereto as Exhibit 7 is a true and correct copy of the notice of Special Council Meeting, dated November 10, 2011, as produced in discovery.

10. Attached hereto as Exhibit 8 is a true and correct copy of the notice of paid administrative leave from Wayne Willich to Ms. Hammer, dated November 18, 2011, as produced in discovery.

11. Attached hereto as Exhibit 9 is a true and correct copy of an email from Ms. Hammer to Wayne Willich dated December 2, 2011, as produced in discovery.

12. Attached hereto as Exhibit 10 is a true and correct copy of an Idaho Mountain Express news article dated November 30, 2011, as produced in discovery.

13. Attached hereto as Exhibit 11 is a true and correct copy of the November 23, 2011 AFFIDAVIT OF NILS RIBI IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER filed in *Sharon R. Hammer v. Nils Ribí, City of Sun Valley, Adam King, and Robert Youngman*, Fifth Judicial District of the State of Idaho, Blaine County Case No. CV-2011-928, without exhibits.

14. Attached hereto as Exhibit 12 is a true and correct copy of the December 28, 2011 Notice of Tort Claim from Ms. Hammer to Sun Valley City Clerk Kelly Ek, as produced in discovery.

15. Attached hereto as Exhibit 13 is a true and correct copy of the December 15, 2011 Charge of Discrimination filed with the Idaho Human Rights Commission by Ms. Hammer, as produced in discovery.

16. Attached hereto as Exhibit 14 is a true and correct copy of an email from Wayne Willich to Ms. Hammer dated December 23, 2011, as produced in discovery.

17. Attached hereto as Exhibit 15 is a true and correct copy of an email exchange between Ms. Hammer and Wayne Willich dated December 29, 2011, as produced in discovery.

18. Attached hereto as Exhibit 16 is a true and correct copy of the Notice of Paid Administrative Leave Pending Investigation from DeWayne Briscoe to Ms. Hammer, dated January 4, 2012, as produced in discovery.

19. Attached hereto as Exhibit 17 is a true and correct copy of the Notice of Administrative Investigation; Order to Participate in Interview Process and Advice of Rights, from DeWayne Briscoe to Ms. Hammer, dated January 4, 2014, as produced in discovery.

20. Attached hereto as Exhibit 18 is a true and correct copy of a statement by DeWayne Briscoe published in the Idaho Mountain Express, dated January 6, 2012, as produced in discovery.

21. Attached hereto as Exhibit 19 is a true and correct copy of the January 9, 2012 AFFIDAVIT OF DEWAYNE BRISCOE in *Sharon R. Hammer v. Nils Ribi, City of Sun Valley, Adam King, and Robert Youngman*, Fifth Judicial District of the State of Idaho, Blaine County Case No. CV-2011-928.

22. Attached hereto as Exhibit 20 is a true and correct copy of the January 16, 2012 Press release issued by Sun Valley, as produced in discovery.

23. Attached hereto as Exhibit 21 is a true and correct copy of an advertisement published by Sun Valley in the Idaho Mountain Express newspaper following Ms. Hammer's termination on January 19, 2012, as produced by Defendants in black and white, as well as a color copy of the same.

24. Attached hereto as Exhibit 22 is a true and correct copy of an email from Kelly Ek to Jerry at the Idaho Mountain Express, dated January 18, 2012, as produced by Defendants.

25. Attached hereto as Exhibit 23 is a true and correct copy of the June 2, 2014 letter and enclosures from Wayne Willich to Eric B. Swartz and Kirtlan Naylor.

26. Attached hereto as Exhibit 24 is a true and correct copy of the May 28, 2014 deposition testimony of Wayne Willich ("Willich Dep.").

27. Attached hereto as Exhibit 25 is a true and correct copy of the May 29, 2014 deposition testimony of DeWayne Briscoe ("Briscoe Dep.").

28. Attached hereto as Exhibit 26 is a true and correct copy of the May 30, 2014 deposition testimony of Nils A. Ribi ("Ribi Dep."), without exhibit.

29. Attached hereto as Exhibit 27 is a true and correct copy of the May 20, 2014 deposition testimony of Robert Youngman ("Youngman Dep."), without exhibits.

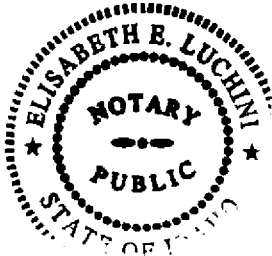
30. Attached hereto as Exhibit 28 is a true and correct copy of the May 21, 2014 deposition testimony of Franz M. Suhadolnik ("Suhadolnik Dep.").

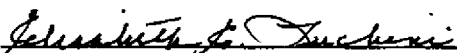
31. Attached hereto as Exhibit 29 is a true and correct copy of the June 10, 2014 deposition testimony of Joan Lamb ("Lamb Dep.").

FURTHER AFFIANT SAYETH NAUGHT.


JOY M. VEGA

SUBSCRIBED AND SWORN TO before me this 17th day of November, 2014.




Notary Public for Idaho
My Commission expires 07.13.2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☒ U.S. Mail
☐ Fax: 383-9516
☐ Hand Delivery
☐ Email: kirt@naylorhales.com

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

**CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT EXTENSION**

This Employment Agreement Extension ("Extension") is made and entered into as of this 17th day of September 2009, by and between the City of Sun Valley, State of Idaho, a municipal corporation, hereinafter referred to as "Employer" and Sharon R. Hammer hereinafter referred to "Employee," collectively known as the "Parties," is made in contemplation of the following:

RECITALS

WHEREAS, Employer and Employee are parties to the City Administrator Employment Agreement; and

WHEREAS, Employer and Employee wish to extend the original Employment Agreement effective June 1, 2008; and

WHEREAS, the Parties wish to amend the Employment Agreement as set forth in this Extension.

TERMS AND CONDITIONS

SECTION 1. TERM

The term of the Employment Agreement Extension is one year commencing on June 1, 2009 and fully incorporates all terms of the Employment Agreement, originally executed by the Parties and effective on June 1, 2008, and this Employment Agreement Extension.

SECTION 2. EMPLOYMENT

The Employment Agreement shall automatically renew on its anniversary date (June 1st) for a period of one (1) year hereinafter unless notice that the Agreement shall terminate is given at least sixty (60) days before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Employment Agreement shall remain in effect until the expiration of the term of the Employment Agreement unless Employee voluntarily resigns.

SECTION 3. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Sixteen Thousand One Hundred and Thirty Two Dollars (\$116,132.00), per year, beginning October 1, 2009 payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed five percent (5%) of Employee's base salary of Section A above, contributions made by Employee to a 457 Plan or other qualified retirement program.

C. Consideration shall be given on an annual basis to increased compensation. Increased compensation can be in the form of a salary increase and/or bonus and/or increase in housing allowance.

D. Employer shall provide Employee a housing allowance of One Thousand One Hundred and Twenty Five Dollars (\$1,125.00) per month beginning October 1, 2009.

SECTION 4. NOTICE

Employee: Sharon Hammer
P.O. Box 1499
Sun Valley, ID 83353

SECTION 5. GENERAL

All other provisions of the City Administrator Employment Agreement effective June 1, 2008 shall remain in full force and affect.

EMPLOYER
CITY OF SUN VALLEY, a
Municipal corporation

EMPLOYEE

By: 

Wayne Willich, Mayor

By: 

Sharon R. Hammer

ATTEST:


City Clerk

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Sharon Hammer

From: Wayne Willich
Sent: Thursday, December 29, 2011 9:26 AM
To: Sharon Hammer
Subject: RE: employment contract

Sharon, yes, we had multiple conversations during the Summer about your contract. It always was cut short with Capital plan, bond election, budget, etc. issues.

The Mayor

From: Sharon Hammer
Sent: Wednesday, December 28, 2011 4:02 PM
To: Wayne Willich
Subject: RE: employment contract
Importance: High

Mayor: Regardless of what the ICRMP attorneys think, please confirm that you told me that my contract would be extended based on our discussions.

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

From: Wayne Willich
Sent: Wednesday, December 28, 2011 2:31 PM
To: Sharon Hammer
Subject: RE: employment contract

Sharon, it was confirmed by the ICRMP attorneys that your contract is valid through June 22nd, 2012.

The Mayor

From: Sharon Hammer
Sent: Wednesday, December 28, 2011 2:26 PM
To: Wayne Willich
Subject: employment contract

HAMMER 000231

Mayor: Please confirm our conversations during summer and fall 2011 regarding my employment contract with the City. We had multiple conversations in which you indicated that you would extend my employment contract through June 22, 2012.

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT



**CITY OF SUN VALLEY
PERSONNEL POLICIES & PROCEDURES MANUAL**

Adopted by the Mayor and City Council
Resolution No. 1997-2 January 16, 1997
Resolution No. 1997-9 January 16, 1997
Resolution No. 2001-03 May 16, 2001
Resolution No. 2004-08 November 18, 2004
Resolution No. 2007-06 February 15, 2007
Resolution No. 2007-12 March 15, 2007



WELCOME!

Welcome to the City of Sun Valley. We congratulate you on your decision to join us. We trust you will be happy with this decision. Every effort will be made on our part to accomplish this end.

The City of Sun Valley has carefully selected you to be one of its Employees. We realize that our strength and future growth depends directly on the efforts of all our Employees. Cities are successful due to the results obtained from sincere and enthusiastic Employees who work together as a team to provide the highest level of services to residents and visitors.

All jobs are important at the City of Sun Valley. No matter what your assignment may be, you can be assured that it is important and that the degree of efficiency and professionalism you demonstrate will have bearing on your future and on the future of the City organization and the residents and visitors we serve.

MISSION STATEMENT

We, the Employees and elected officials of the City of Sun Valley, are dedicated to providing a positive environment wherein the quality of life and economic well-being of all who live, visit and work in Sun Valley may be preserved.

The success of the City of Sun Valley relies on a moral sense of stewardship and adherence to the ideals of excellence in service to its citizens through the personal contributions of all.



TABLE OF CONTENTS

SECTION 1: GENERAL POLICIES	Page Numbers
1.1 Purpose.....	1-1
1.2 Establishment of Policies and Procedure.....	1-1
1.3 Equal Employment Opportunity.....	1-1
1.4 At Will Employment Policy.....	1-2
1.5 Employment Agreements.....	1-2
 SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES & PROCEDURES	
2.1 General Administration.....	2-1
2.2 Distribution.....	2-1
 SECTION 3: EMPLOYMENT PRACTICES	
3.1 Appointing Authority.....	3-1
3.2 Administration Authority.....	3-1
3.3 Personnel Records.....	3-1
3.4 Recruitment and Selection Procedures.....	3-2
3.5 Appointments.....	3-3
3.6 Employment of Relatives.....	3-3
3.7 Transfers.....	3-4
3.8 Resignations/Dismissals.....	3-4
3.9 Hours of Work.....	3-4
3.10 Attendance and Punctuality.....	3-4
3.11 Work Schedules.....	3-5
3.12 Resident Requirements.....	3-5
3.13 City Vehicles.....	3-5
3.14 Travel Expense Reimbursements.....	3-5
3.15 Electronic Communication Systems Usage Policy.....	3-6
 SECTION 4: JOB DESCRIPTIONS & SALARY PLAN	
4.1 Job Descriptions.....	4-1
4.2 Full Time and Part Time Status.....	4-1
4.3 Seasonal & Temporary Employees.....	4-2
4.4 Volunteers.....	4-2
4.5 Exempt Employees.....	4-2
4.6 Salary Plan.....	4-3
4.7 Pay Periods.....	4-4
4.8 Overtime Pay.....	4-4
 SECTION 5: BENEFITS	
5.1 Holidays.....	5-1
5.2 Vacation.....	5-1
5.3 Sabbatical Leave.....	5-2
5.4 Sick Leave.....	5-2
5.5 Medical Insurance.....	5-3
5.6 Family Care & Medical Leave Policy.....	5-3
5.7 Life Insurance.....	5-3



5.8 Workers Compensation Insurance	5-3
5.9 State Unemployment Insurance, Social Security Benefits.....	5-3
5.10 Section 457 Deferred Compensation.....	5-4
5.11 Special Leave	5-4

SECTION 6: EMPLOYEE EVALUATION

6.1 Evaluation Procedure.....	6-1
6.2 Appeal.....	6-2

SECTION 7: STANDARDS OF CONDUCT

7.1 Purpose.....	7-1
7.2 Safety Policy.....	7-1
7.3 Conflict of Interest.....	7-1
7.4 Confidentiality of Records.....	7-1
7.5 Harassment Policy.....	7-1
7.6 Substance Abuse.....	7-3
7.7 Outside Employment.....	7-3
7.8 Proprietary Rights.....	7-3
7.9 Dress & Personal Grooming	7-4
7.10 Smoke-Free Work Environment.....	7-4
7.11 Gratuities.....	7-4

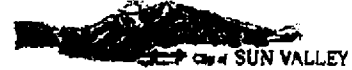
SECTION 8: DISCIPLINE

8.1 Policy & Purpose.....	8-1
8.2 Supervisory Responsibility.....	8-1
8.3 Applicability	8-1
8.4 Causes for Disciplinary Action.....	8-1
8.5 Forms of Disciplinary Action	8-2
8.6 Administration of Discipline.....	8-3
8.7 Informal Review	8-3

APPENDICES

Appendix A: Medical Insurance	A-1
Appendix B: Federal Family & Medical Leave Act.....	A-2
Appendix C: Life Insurance	A-3

Acknowledgment of Receipt of City of Sun Valley Manual & Policy Updates



CITY OF SUN VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL

ACKNOWLEDGMENT OF RECEIPT

I, _____ acknowledge receipt of the City of Sun Valley Personnel Policies and Procedures Manual and/or any amendments or changes to the Manual.

I understand that I have thirty (30) days to read and review the Manual and to fully understand the provisions in the Manual.

I understand that this Manual is not a contract and cannot create a contract.

I understand that I am obligated to perform my duties of employment in conformance with the provisions of the Manual and any additional rules, regulations, policies or procedures of the department in which I work whether or not I choose to read the Manual or any amendments or changes to the Manual.

Signature of Employee

Title: _____

Date: _____



SECTION 1: GENERAL POLICIES

1.1 PURPOSE

The purpose of the *Personnel Policies and Procedures Manual* is to set forth the standards, procedures, and regulations guiding employment with the City of Sun Valley. It is predicated on the belief that achievement of the City's goals and objectives rests primarily on the efforts, dedication and cooperation of the Employees. In order to maintain efficient and effective City services, it is essential that the rules and regulations governing personnel be clearly communicated and impartially administered. Where federal law or funding source regulations are in conflict with this Manual, the City shall follow such laws or regulations as applicable.

1.2 ESTABLISHMENT OF POLICIES AND PROCEDURES

The *Personnel Policies and Procedures Manual* shall be prepared and maintained by the City Administrator or his/her designee. In response to changes in applicable laws, regulations and changing conditions within the City, the City Administrator shall periodically review and recommend additions, deletions or amendments to these policies to the Mayor and Council. Amendments and revisions to the Manual shall be by resolution of the Mayor and the City Council and shall be approved prior to implementation.

The Manual, with all adopted amendments and changes, supersedes all previous policies not consistent with the provisions hereof. The Manual, however, it is not intended to be an exclusive source of rules and regulations concerning employment. Individual City departments are entitled to establish work standards and procedures necessary to implement City policy or to efficiently carry out the functions of the department, provided such standards do not diminish the benefits or protections granted to Employees by City policy.

The contents of this Manual are subject to modification at any time without notice. The City reserves the right to revise, supplement or rescind any of the provisions of the Manual as deemed appropriate. It is understood that any such modification may alter the rights and obligations of the City to its Employees. The City reserves the right to change these policies and procedures as the City deems appropriate.

1.3 EQUAL EMPLOYMENT OPPORTUNITY POLICY

The selection of all City Employees and all employment decisions, including classification, transfer, discipline and discharge will be made without regard to race, religion, gender, age, national origin. No job, or class of jobs, will be closed to any individual except where a mental or physical attribute, gender or age is a bona fide occupational qualification. It is the policy of City to comply as applicable with the Americans with Disabilities Act. All objections to application of the City's Equal Employment Opportunity Policy shall be brought to the attention of the City Administrator or in the case of objection to actions undertaken by the City Administrator to the Mayor.



1.4 AT WILL EMPLOYMENT

The Personnel Policies and Procedures Manual is not a contract. All Employees of the City are Employees "At Will" and may be terminated at any time with or without cause.

1.5 EMPLOYMENT AGREEMENTS

The City may enter into written employment agreements with any Employee. The provisions of any employment agreement shall supercede this Manual in the event of a conflict.



SECTION 2: ADMINISTRATION OF PERSONNEL POLICIES AND PROCEDURES

2.1 GENERAL ADMINISTRATION

Authority for the administration of Personnel Policies and Procedures is delegated to the City Administrator, who is responsible to and directed by the Mayor, and who is responsible for the City's day-to-day operations.

- A. It shall be the responsibility of the City Administrator to provide interpretation and advice to Department Heads and Supervisory staff concerning the application of these policies and procedures. The City Administrator shall make the final determination of questions of interpretations of these policies and the application of these policies.
- B. City Attorney: As the legal counsel for the City, the City Attorney shall provide professional legal advice and services to the City Administrator and Mayor on matters related to these policies and procedures.

2.2 DISTRIBUTION

At the time of employment, each Employee shall receive a copy of this Manual. It is the responsibility of the Employee to familiarize him or herself with the contents of the Manual and to acknowledge its receipt in writing. Periodic updates or changes shall also be acknowledged in writing.



SECTION 3: EMPLOYMENT PRACTICES

3.1 APPOINTING AUTHORITY

The appointment and discharge of the City Administrator, City Clerk, City Treasurer and City Attorney shall be made by the Mayor and approved by the majority of the City Council. All other personnel shall be appointed or discharged by the City Administrator.

3.2 ADMINISTRATION AUTHORITY

The City Administrator and City Attorney shall be directly supervised and evaluated by the Mayor. All other personnel, including the City Clerk and City Treasurer, shall be directly supervised and evaluated by the City Administrator.

3.3 PERSONNEL RECORDS

Complete and permanent records of the employment history of each current and former Employee of the City shall be maintained by the City Administrator's office. These files shall contain all documents permitted by Federal and State law. No document shall be placed in an Employee's file without his/her knowledge and receipt of a copy of same.

Personnel records are confidential documents and are only to be reviewed by those staff on a need to know basis. Such review is restricted to the Employee, the Employee's Supervisory chain, the City Administrator and the Mayor.

The City Administrator is responsible for assuring that the following information and documents are included in each Employee's Personnel File:

1. The original employment application and resume;
2. A copy of the offer letter;
3. Copies of all personnel action forms, such as change of name or address, salary and wage adjustments, promotion or demotions, separations, disciplinary actions, or records of leaves of absences;
4. Copies of performance appraisals;
5. Copies of all licenses and certificates pertinent to the job requirements;
6. The Employee's signed statement of having received, read and understood the City of Sun Valley's Personnel Policies & Procedures Manual; and
7. A copy of the Employee's background investigation and verification of references.

The City Administrator's Office will maintain separate Employee records as the Employee's Payroll Record File, which will include the following:

1. A copy of the Employee's W-2 form;
2. A copy of the Employee's Employment Eligibility Verification Form (Form I-9), required for all Employees by the U. S. Department of Justice, Immigration and Naturalization Service;



3. A copy of the Employee's PERSI application and authorization for salary deduction to provide for benefits;
4. A copy of any authorization for salary deduction for benefits;
5. Copies of the Employee's selection of benefits;
6. Time and attendance records;
7. Payroll records;
8. Wage garnishments.

The confidentiality of all individual Employee records shall be strictly enforced subject to the conditions outlined above. An Employee's Personnel File and Payroll Record File shall not be removed from the City Administrator's office except upon written approval of the City Administrator.

3.4 RECRUITMENT AND SELECTION PROCEDURES

The employment hiring process will be comprised of the following stages:

- A. Vacancies: When a vacancy occurs, a request to fill the vacant position shall be prepared by the respective Department Head and presented to the City Administrator. It shall include information pertinent to the decision of whether or not to fill the vacancy. The City Administrator shall review the budget to ensure that each vacancy is within its budgeted position allocation. The City Administrator shall also consider the availability of in-house candidates to fill the vacancy.
- B. Recruitment Process: The recruitment process will begin when a request is received and approved by the City Administrator. The City Administrator will determine whether the recruitment will proceed as an "open competitive," a "closed promotional," or an "open/promotional" opportunity. The City Administrator shall determine the recruiting sources to be used and the recruitment time period, taking into account the City's needs, recruitment strategy, and any special requirements of the position.
- C. Notice of Recruitment: Notice of all City recruitments shall be posted on the City's bulletin boards or other designated locations for a period of at least three business days. This notice shall include the deadline for filing applications.
- D. Types of Examinations:
 1. Open Competitive: This recruitment shall be open to the public. Such recruitment shall be used to fill entry level vacancies, and vacancies above the entry level where sufficient qualified applicants for promotion are not available.
 2. Closed Promotional: This recruitment shall be open only to regular and probationary Employees of the City who meet the minimum requirements as set forth in the promotional recruitment's job announcement.



3. Open and Promotional: When in the interests of the City, an external search is deemed necessary to fill a particular position, a promotional recruitment may also be open to the public.

- E. Application Process: All applications for employment shall be made on an official City application form. The form will require information covering a candidate's education, training, experience, and other information deemed pertinent and allowable by law. When the position to be filled requires special or exceptional
- F. Selection Methods: Applicants for positions shall meet the minimum qualifications of the position for which they have applied. Qualifications shall be evaluated on the basis of information provided on the application form, resume, and any supplemental documents required by the City, as well as on written and performance test scores, interview scores and background investigations.

3.5 APPOINTMENTS

When a candidate has been chosen for a position, the City Administrator shall prepare an offer letter. This letter will contain the following information:

1. The position title;
2. The effective date of hire;
3. The wage/salary which will be offered; to include any intent and purpose to adjust salary not related to merit increase;
4. The working hours;
5. Notice that the appointment is contingent upon successful completion of a physical examination, if the position is in a classification which requires such;
6. A copy of the job description; and
7. A signature block for the candidate to sign, indicating that he/she has accepted the position under the above circumstances.

A copy of the offer letter shall be kept in the Employee's permanent personnel file.

3.6 EMPLOYMENT OF RELATIVES

The City does not employ members of an Employee's immediate family, unless the City Administrator approves this arrangement.



3.7 TRANSFERS

An Employee may request a transfer from one department to another, providing the position that the Employee wishes to transfer to is in the same classification series and that the position is an equal or lower classification in the series than the classification in which the Employee is currently. In addition, the Employee must meet the minimum qualifications for the position as set forth in the classification specification documents.

The Employee shall direct his/her request to the City Administrator. The request shall then be forwarded to the appropriate Department Head. Such requests shall be given consideration when a suitable vacancy occurs and must be approved by the City Administrator.

This transfer policy is not designed to, nor does it create any contract right, express or implied, to a transfer, nor does the City's refusal to grant an Employee's request for transfer give rise to any claims against it. The City reserves the right to fill any vacancy by transfer or by other recruitment means, as deemed appropriate by the City Administrator.

3.8 RESIGNATIONS/DISMISSALS

Upon an Employee's resignation or dismissal, records pertaining to the separation of the Employee shall remain part of the Employee's permanent personnel file. The City Administrator shall ensure that separations from employment are handled in a manner that will not interrupt the orderly operation of City business.

Upon separation from employment, an Employee shall be paid for any wages/salary due and for all unused vacation time at the Employee's regular rate of pay within 48 hours of separation from service. In the event of an Employee's death, the estate of the Employee shall be paid all of the Employee's accrued salary and vacation leave.

3.9 HOURS OF WORK

The City Administrator shall determine the hours during which City office and departments shall be open to serve the public. The hours of work of individual positions may be proposed by the respective Department Head and approved by the City Administrator in order to serve the needs of the City.

The work schedule will normally provide for a work week of forty (40) hours within a seven-day period, from 8:00 a.m. to 5:00 p.m., including a lunch period. Other work schedules may be established by the City Administrator in order to meet the needs of specific City services.

3.10 ATTENDANCE AND PUNCTUALITY

Employees are expected to be at work on their normally scheduled workdays, unless they have received approval for an absence from their immediate Supervisor. An Employee who is absent from work for three (3) consecutive working days, without Supervisory authorization or a statement of justification from an attending physician, will be considered to have abandoned



his/her job as of the last day of active employment, and will be declared to have voluntarily quit, unless the City subsequently determines that the absence was due to circumstances beyond the Employee's control. Because of overtime requirements, non-exempt positions should not begin work before their assigned time nor leave work later than their assigned ending time without the prior approval of their Supervisor.

Non-exempt Employees who are more than ten (10) minutes late to their assigned place of work are considered tardy. An Employee who regularly fails to arrive at work on time without a legitimate reason or who does not notify his/her Supervisor is subject to disciplinary action. The Supervisor shall determine whether the reason given is legitimate. Employees who cease and/or leave work before the end of their assigned work day shall also be subject to disciplinary action.

3.11 WORK SCHEDULES

The City Administrator will work with the Department Heads to establish normal work schedules. The City retains the right to alter work schedules in order to best meet the needs of the organization and of the public.

3.12 RESIDENT REQUIREMENTS

The Fire Chief, Assistant Fire Chief and Street Superintendent are required to reside within the incorporated limits of Sun Valley or Ketchum. The City may on an annual basis provide a housing allowance or suitable housing to aid in the additional costs of nearby residency. In addition, emergency services departments may adopt restrictions on travel time and distance requirements for Employees or volunteers in order to accomplish Employee response during emergencies.

3.13 CITY VEHICLES

Drivers of City-owned vehicles or drivers of private vehicles while on City business shall obey all traffic and speed laws. The use of seat belts is required at all times. Controlled substances shall never be carried in a City vehicle or a private vehicle on City business, with the exception of evidence by law enforcement officials.

City-owned vehicles shall never be used for private purposes. When Employees are required to travel outside the City while on City business, Employees should use a City vehicle unless use of a private vehicle is approved by the Supervisor.

The Fire Chief is provided City-owned vehicles which may be taken home and used during any work period for travel within or out of the City. In the absence of the Fire Chief, the Assistant Fire Chief may use the City-owned vehicle during any work period for travel within or out of the City.

3.14 TRAVEL EXPENSES REIMBURSEMENT

Reimbursement for expenses incurred when an Employee is traveling on City business shall be



according to the following:

1. Prior to traveling outside the County, the Employee shall make written application and obtain approval from the Supervisor for the trip. Travel requests shall include an estimate of the costs involved.
2. Requests for reimbursement of expenses shall be submitted on a travel expenses form. All expenditure receipts shall be submitted when a request for reimbursement is made.
3. The City Administrator will set maximum per diem allowances for meals.
4. If an Employee is authorized to use his/her private vehicle for City business, mileage shall be paid at the rate set by the Federal tax reimbursement rate.

3.15 ELECTRONIC COMMUNICATION SYSTEMS USAGE POLICY

A. PURPOSE: The availability of electronic communication systems within the work environment provides many opportunities for enhancement of productivity and effectiveness. These systems also entail the opportunity for rapid transfer and broad dissemination of sensitive material that can have damaging effects on the City of Sun Valley, its employees, and the public, if not managed properly. It is important, therefore, that the City of Sun Valley establish a policy which provides direction to City employees regarding the purchase, lease, license and use of electronic communication systems.

B. ADMINISTRATION: The City Administrator or her/his designee shall be responsible for the implementation of the Electronic Communication System Usage Policy.

C. DEFINITIONS:

1. Electronic Communications System includes cell phones, PDA's, hardware, software, webpage, computers, electronic mail systems (email), voice mail systems, paging systems, electronic bulletin boards, Internet services, fax machines, mobile digital terminals (MDT), and any part of the City of Sun Valley leased or acquired network system(s) of any sort.
2. Computer - A programmable electronic device that can store, retrieve, and process data, including any computer issued or maintained by the City of Sun Valley, including but not limited to both laptop and desktop versions, or any computer which is attached to or a part of the City of Sun Valley computer network.
3. Hardware - The physical components of a computer, including the monitor, keyboard, central processing unit, floppy drives, CD-ROM drives, external storage media, and all peripheral accessories, including but not limited to, network connections, printers, scanners, speakers, printer cables and mouse.



4. License - To permit or authorize the use of.
5. Network System - The hardware and software which provides for the interconnection of City computers.
6. Programming - A sequence of coded instructions that can be inserted into a mechanism (such as a computer) to work out a series of instructions.
7. Shareware - Computer software that can be used and copied without charge. However, shareware is copyrighted and, if the copyright holder requests, a donation or fee must be paid if the software is used regularly.
8. Software - The entire set of programs, procedures and related documentation associated with a computer system/program.

D. PURCHASES, COPYRIGHT AND LICENSES

1. The purchase, lease, or license of all electronic communication system hardware and software must be approved by the City Administrator or her/his designee.
2. Copying of computer software owned by the City of Sun Valley shall be governed by the copyright agreement..
3. License agreements will be maintained by the City Administrator or her/his designee. The license agreement shall be the ultimate rule governing the use of the software. Any act permitted by this policy, but not permitted by the license agreement of the software program, shall be considered null and void.
4. Software registration must be completed for all software purchased by the City at the time of purchase and shall list the City of Sun Valley as the purchaser and list the City Administrator as the contact for inquiries as to the use of the product.

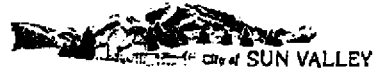
E. GENERAL REQUIREMENTS

1. The electronic communication system is to be used for City business purposes only.
2. Incidental personal use of the Internet is allowed from time-to-time during breaks, including the lunch hour, to check for email on a personal, non-City account(s).
3. All messages composed, sent, stored, copied or received via electronic communication systems are the property of the City. These messages are not private property of any employee, and no employee should have any



expectations of privacy in such messages. The City Administrator has the right to access, close and/or disclose all messages sent via an electronic communications system. Employees, therefore, should treat electronic communications with the same degree of propriety and professionalism as official correspondence.

4. The City Administrator shall regulate the requirements for City password usage. All employees shall change, alter, or modify their passwords as required by the City Administrator.
5. Confidential electronic files must be professionally erased or storage devices containing these files removed from any computer or hardware device prior to the computer or hardware device being removed from the agency for servicing, repairs, or replacement.
6. The City Administrator must be notified immediately when --
 - a. Sensitive information is or suspected of being lost or disclosed to unauthorized parties.
 - b. Unauthorized use of the electronic communications system has taken place, or is suspected of taking place.
 - c. Passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
 - d. Any unusual system behavior such as missing files, frequent system crashes, misrouted messages, and the like appear because it may indicate a computer virus infection or similar security problem.
7. It is the intent of the City to provide the tools that every employee needs to successfully complete assignments. Occasionally an employee is allowed to use his or her personal computer for City business subject to prior department head approval and the following conditions:
 - a. Any personal computer used for City business will be regulated by this policy as if it were a City purchased computer.
 - b. All document files, emails, and any other type of file created on a personally-owned computer that is being used for City business is subject to the Public Records Law, and the employee who owns the computer must make the computer and its contents available for inspection in accordance with that law at any time it is requested.
8. The City Administrator shall define the network server uses, organizational format, use of older/file protection, storage and other aspects of network capabilities. Employees have the responsibility to use the network server effectively in meeting these directions.



9. Electronic communications are subject to the provisions of Resolution 2006-05 – Records Retention.
10. An employee may indicate her/his affiliation with the City of Sun Valley in bulletin board discussions, chat sessions, and other offerings on the Internet. This may be done by explicitly adding certain words, or it may be implied. In such cases where the employee states her/his affiliation with the City, she/he must also clearly indicate the opinions expressed are her/his own and not necessarily those of the City of Sun Valley.
11. The use of electronic communication systems shall be in keeping with applicable Federal, State, local, civil and criminal laws.

F. UNAUTHORIZED ACTIVITIES

1. No personally owned software applications or shareware software may be installed on a City computer, including, but not limited to, games, entertainment software, and screen savers unless written permission is given by the City Administrator and it is allowed by the licensing agreement of the software.
2. No employee may tamper with, change, delete, reprogram, copy protected codes, enter into areas of the program reserved for programming, insert additional programming, or rename any computer software program purchased, leased, or licensed for use by the agency, unless it is authorized by the licensing agreement. No employee shall perform any repairs, installations, modifications, removal, or relocation of any computer hardware, peripherals, and associated components without first obtaining authorization by the City Administrator.
3. Electronic transfer of files, software, or programs purchased by the City is not authorized unless it is allowed by the licensing agreement of the software product.
4. Employees shall not use the email account or password assigned to another individual to send or receive messages unless authorized to do so by the owner of the email account.
5. The electronic communication system shall not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non job-related solicitations, or used for any personal commerce or purchases.
6. The electronic communication system shall not be used to send (upload) or receive (download) copyrighted materials, trade secrets, or proprietary information. Failure to observe copyright or license agreements may result in disciplinary action and/or legal action by the copyright owner.



7. No employee shall utilize or cause any City-owned computer to utilize an automatic log-on. Employees are prohibited from leaving a City computer unattended while logged on.
8. The encryption of files and the use of encryption programs are not permitted on any City computer without the prior authorization of the City Administrator.
9. No employee shall bypass or modify any installed security systems or menu interfaces without the expressed permission of the City Administrator.
10. No employee shall knowingly introduce any computer virus into any part of the electronic communications system operated by the City. Employees must use due care and caution to avoid inadvertently introducing computer viruses into any City computer by any means. Any material received which is suspect, e.g. multiple copies of email with the same subject line information received in rapid succession, should not be opened.
11. Viewing, downloading, communicating and/or transmitting material (for other than law enforcement purposes) that is known to involve the use of obscene language, images, jokes, sexually explicit materials or messages that disparage any person, group, or classification of individuals is strictly prohibited. Any employee who uses the City's equipment or network for these purposes will be subject to an immediate, severe disciplinary response.
12. Employees shall not use photographs or other material depicting City logos, vehicles, etc. on any personal or privately-owned home page. Personal/private home pages shall be clearly identifiable as personal pages.
13. Electronic communication systems are for the exclusive and sole use of City employee and shall not be used at any time by family members, friends or other persons not employed by the City.



SECTION 4: JOB DESCRIPTIONS & SALARY PLAN

4.1 JOB DESCRIPTIONS

All Employee positions in the City will have a job description which will include but is not limited to the position title, statement of duties, required skills, knowledge and abilities, education and experience requirements. The job description will be developed by the Department Head and approved by the City Administrator. A review of each job description shall be conducted periodically by the City Administrator. The City Administrator may from time to time abolish certain job positions based upon the needs of the City.

4.2 FULL-TIME AND PART-TIME STATUS

The status of the position held with the City may affect the status of obligations or benefits associated with City employment. The procedures for hiring, promotion and transfer of full-time Employees shall be subject to the provisions of this Manual. Personnel actions concerning part-time or casual Employees are not subject to guidelines set forth herein unless the Manual's provisions expressly provide therefore. The primary groups of Employees and their respective status is outlined as follows:

A. FULL TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least 30 hours of scheduled work during a seven (7) calendar day period. Full-time regular Employees shall receive all Employee benefits provided by the City as such benefits now exist or may be subsequently changed.
2. Police Officer Idaho Post Certification: Any police officer obtaining an Idaho post certification shall be eligible for a regular employment status.
3. The Police Department has selected a full time employment scheduling period of fourteen (14) days as allowed by FLSA. This scheduling may be changed by the Police Chief with the approval of the City Administrator.

B. PART TIME REGULAR EMPLOYEES

1. Employees whose typical work schedule calls for at least twenty (20) hours, but not as much as thirty (30) hours, of scheduled work during a seven (7) calendar day period. Part-time regular Employees shall receive reduced Employee benefits in accordance with policies adopted by the Council. The scope of benefits received may vary proportionately with the number of hours typically scheduled for a part-time regular Employee. The number of hours scheduled may also affect the Employee's obligation to participate in certain mandatory state benefit programs. Certain benefits may not be available.



4.3 SEASONAL & TEMPORARY EMPLOYEES

This Section sets forth policies governing the City's use of temporary and seasonal Employees, and volunteers. Except as specifically provided within this Section, volunteers and seasonal Employees do not have any rights as regular full or part-time Employees.

- A. Seasonal and Temporary Employees may be employed on an as-needed basis by the City, not to exceed 1,000 hours per fiscal year (October 1 through September 30). Within budgetary constraints, the City Administrator will have the authority to appoint temporary and seasonal Employees.
- B. The City Administrator will determine the appropriate hourly rate of pay and benefits, if any. All Seasonal and Temporary Employees will be retained with a written Letter of Employment.

4.4 VOLUNTEERS

Volunteers may be utilized by the City in any capacity that is deemed suitable by the City Administrator. The number of volunteers being utilized by the City at any one time may vary by programmatic needs and the availability of volunteers available with specialized skills or abilities which may be needed.

Upon the initiation of the volunteer relationship, the volunteer shall sign a "Volunteer Waiver Form." Volunteers shall submit a monthly log detailing the number of hours contributed to the City. The City will utilize volunteers to provide fire suppression services.

The City shall provide coverage for all volunteers under the State workers' compensation system as required by law. The City Administrator will determine the amount of hourly pay and conditions for such pay and/or benefits, if any.

4.5 EXEMPT EMPLOYEES

The City Administrator is authorized to evaluate each job position as necessary to determine whether it shall be "exempt" from certain work provisions as defined in the Fair Labor Standards Act (FLSA). The following positions have been determined to be "exempt": City Administrator, Police Chief, Fire Chief, Assistant Fire Chief, Director of Community Development, Street Superintendent, City Clerk, Finance Manager/City Treasurer and the Building Official.



4.6 SALARY PLAN

A. POLICY

The City's policy is to recognize and compensate Employees for work performed within and beyond the normal work period. Accordingly, the City will maintain a Salary Plan.

The Salary Plan shall include all job positions in the City except the City Administrator and City Attorney and shall set forth salary ranges for those positions. The City Administrator shall have the responsibility to develop and maintain the Salary Plan. The Salary Plan will establish minimum and maximum salaries for each job position, with the exception of the City Administrator and City Attorney. The Salary Plan will be presented to the Mayor and City Council for adoption. Every third year, commencing in April 2010, the City Administrator will update the Salary Plan for regional market changes to ensure job positions are competitive. (Amended by Resolution 2007-06)

B. SALARY PLAN ADMINISTRATION

The Salary Plan shall be implemented and administered by the City Administrator who shall determine the rate of pay for each Employee. Movement in the Salary Plan is not automatic. The City Administrator reserves the right to change Employee salaries for any reason deemed appropriate including but not limited to job performance and the availability of City funds.

In order to properly compensate Employees, salary determinations shall be based upon the following:

1. **New Employees:** The job qualifications, experience and education of the new Employee will be evaluated in determining a new Employee's starting salary within the Salary Plan.
2. **Merit Increases:** In order to properly compensate Employees, adjustments in salary shall be based on a merit pay system. Adjustments will not be automatic, but shall depend upon achieving an "above standard" rating or "outstanding" rating on an annual performance evaluation or a six month probationary performance evaluation. Salary adjustments for those Employees achieving a rating worthy of merit increase consideration shall fall within the salary plan range for that position, unless approved otherwise by the City Administrator.
3. **Employee Changes In Status:**
 - a. **Promotions:** An Employee who is promoted to a higher classification shall be placed in the higher salary range and will receive an increase not to exceed the maximum rate in the new range. When promoted, an Employee will retain his/her original



hire date for purposes of calculating annual benefits, but the date of promotion will be used for purposes of performance evaluations and merit consideration.

- b. Voluntary Demotion: An Employee who voluntarily is demoted shall be placed in the new job position salary range, at a step as close as possible to his/her previous step and range. However, his/her salary shall not exceed the maximum rate for the new, lower salary range.
- c. Involuntary Demotion: An Employee who is involuntarily demoted as a result of disciplinary action may be placed in a new job position range and his/her salary reduced.
- d. Transfers: An Employee who transfers laterally to a classification with the same salary range shall retain his/her present salary placement.
- e. Employees who have reached Step 9 of their position's Salary Plan: Upon receiving an excellent performance evaluation, an employee who as reached Step 9 of their position's Salary Plan may be eligible for a 2.5% pay increase.

4.7 PAY PERIODS

The City operates on a biweekly pay period which shall commence on Monday and continue through the following second Sunday (two weeks). Employees shall receive pay for the prior two week pay period by 5 p.m. the following Thursday. If the Thursday is a holiday, the pay date will be the first business day preceding the holiday. The manner of distribution of paychecks will be determined by the City Administrator.

4.8 OVERTIME PAY

A. OVERTIME PAY FOR NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act (FLSA) stipulates that overtime compensation shall be paid to non-exempt Employees. All overtime must be authorized by the Supervisor in advance. Overtime pay will be administered as follows:

1. The Police Department work period shall be fourteen (14) days as allowed under FLSA. Overtime for nonexempt Employees will begin to accrue after eighty hour of work within the work period. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.
2. All other nonexempt Employees shall be entitled to overtime pay for work performed in excess of forty (40) hours per week. Overtime will be compensated at a rate of pay equal to one and one-half times the Employee's regular hourly rate of pay.



3. The Employee may request to be granted compensatory time off without pay in lieu of receiving overtime pay consistent with the applicable FLSA regulations. This request must be made each time overtime hours are worked. The request should be directed to the Department Head, who may grant the request if time off would not pose a disruption of operations and the delivery of services. Compensatory time off will be at the rate of one and one-half hours off for each hour of overtime worked.
4. Compensatory time accrual will not exceed 40 hours for any Employee.

B. EXEMPT EMPLOYEE OVERTIME

It is anticipated that exempt Employees will work more than 2080 hours per year. Exempt Employees are expected to manage workloads to meet the high quality service needs of the City, including the supervision of staff, and may have variations in the hours worked from week to week to do so. Exempt Employees are not eligible for overtime compensation.



SECTION 5: BENEFITS

5.1 HOLIDAYS

The following eleven (11) holidays are observed: employee's birthday or anniversary, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, and New Year's Day.

Holidays which fall on a Saturday are taken on Friday; those which fall on a Sunday are taken on a Monday.

Police Officers are scheduled into eighty (80) hour rotations either for work or for a day off over fifty-two (52) weeks. Officers who have a regular scheduled day off on a holiday shall be provided eight hours of compensatory time off. Officers who are scheduled to work on a holiday will be compensated with one (1) hour of compensatory time off for each hour worked on the holiday.

Any other Employee who is called into work during a designated holiday, in addition to being paid for the holiday, shall be paid time and one-half for each hour worked on the holiday. Compensation shall be either cash or compensatory time off, at the discretion of the Department Head.

5.2 VACATION LEAVE

- A. The purpose of vacation leave is to allow the Employee extended rest and rejuvenation. Regular full-time Employees shall be provided annual vacation leave according to the following schedule:

<u>Years of Employment</u>	<u>Vacation Days</u>
Year 1	10
Years 2-7	15
Years 8+	20

- B. Regular part-time Employees shall be provided vacation leave according to the above formula in proportion to hours actually worked in a typical 40 hour work week.

- C. The following provisions apply to vacation leave:

1. Employees are required to take a minimum of 80 hours of vacation per year, unless approved otherwise by the Employee's Supervisor. Employees may begin taking accrued vacation time after six (6) months of employment.
2. Employees may accrue a maximum of one hundred (100) hours of vacation. When the Employee has accrued one hundred (100) hours of vacation leave,



the Employee will cease accruing vacation leave until his/her accrual balance falls below one hundred (100) hours. (Amended by Resolution 2007.06)

3. Vacation Leave Conversion: With the approval of the Employee's Supervisor and the City Administrator, up to forty (40) hours of vacation leave may be converted to cash payment at the Employee's straight time rate each calendar year only if the Employee has used an equal amount of vacation leave in the previous 12 month period; for administrative purposes, no more than two (2) requests for conversion during the calendar year will be allowed, and any hours of vacation leave counted in the first request for that year may not be counted in the second.
4. Paid holidays which occur during vacation leave will not be charged to vacation time.
5. Vacation must be scheduled and approved in advance with the respective Department Head, in order to ensure continued operation of City services.

5.3 SABBATICAL LEAVE

- A. The purpose of the sabbatical is to allow the Employee extended paid time off from work to pursue a personal or professional interest, including rest and relaxation.
- B. Employees will be entitled to fifteen (15) days of paid sabbatical leave after completion of the first three years of employment and every four (4) years of employment thereafter. The following provisions apply to sabbatical leave:
 1. The fifteen (15) days leave must be taken in the first year following each three year anniversary date or be forfeited, i.e., years 4, 8, 12, etc.
 2. There is no conversion of the sabbatical leave to cash payment at anytime including upon leaving the employment of the City prior to or during a sabbatical year. The sabbatical leave may be combined with other additional accrued vacation, if approved by the Supervisor. The sabbatical leave dates must be scheduled in consultation and with the approval of the Supervisor. It is expected that the fifteen (15) days of sabbatical leave will be taken as a single block of time off.

5.4 SICK LEAVE

Sick leave shall be a benefit to all regular full-time Employees as an assurance against a loss of income during the Employee's illness, injury, or disability when the Employee is unable to fulfill his/her job duties. Employees may also take sick leave to care for a member of the immediate family, including children, spouses and parents. Sick leave shall accrue at the rate of one day per month.



Sick Leave Accrual: Employees may accrue a maximum of 720 hours of sick leave. Sick time accruals are forfeited at the time of employment termination and there is no cash equivalent payment provided by the City.

Physician's Statement: The City may request a Physician's Statement for absences of more than three (3) days.

Duplication of benefits: Sick leave benefits are not to be drawn during such time as the Employee is drawing unemployment, workers' compensation, disability insurance, or any other similar benefits or payments, either from the City or from any other source except for personal, non-City related insurance benefits.

5.5 MEDICAL INSURANCE

The City provides to each Employee and his/her dependents a medical health insurance policy, which includes but is not limited to health and dental insurance. Due to the changing nature of medical insurance and the associated premiums, the current Medical Insurance Plan of the City will be on file with the Finance Manager/City Treasurer. Appendix A summarizes the current benefits and will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.6 FAMILY CARE AND MEDICAL LEAVE POLICY

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible Employees as required by federal and state law. Appendix B sets forth certain rights and obligations with respect to the Federal Family and Medical Leave Act of 1993 (FMLA).

5.7 LIFE INSURANCE

The City may provide each Employee a Life Insurance Policy. Appendix C summarizes any current benefit. The Appendix will be updated and attached to this Manual whenever changes in coverage or benefit are approved by the Mayor and City Council.

5.8 WORKERS' COMPENSATION INSURANCE

All Employees are covered by workers' compensation insurance in accordance with state and federal law. An Employee who suffers a work related illness or injury should check with the City Administrator's office for further information.

5.9 STATE UNEMPLOYMENT INSURANCE, SOCIAL SECURITY BENEFITS AND PERSI

All Employees of the City are covered by these benefits in accordance with state and federal law. In addition, all regular Employees are covered by the Public Employees' Retirement System of Idaho (PERSI). Contributions are made by both the City and the Employee.



5.10 SECTION 457 DEFERRED COMPENSATION

All regular full-time Employees and regular part-time Employees who work more than thirty (30) hours per week are eligible to participate in the City's optional deferred compensation plan. This plan, governed by IRS (Section 457) and state law, provides for the Employee to defer a portion of his/her income before taxes through payroll deduction, and provides for a variety of investment options.

5.11 SPECIAL LEAVE

A. PROFESSIONAL DEVELOPMENT AND EDUCATIONAL

The City encourages and supports the continuing education and training of Employees. Job related training or education shall be approved in advance by the Employee's direct Supervisor, in consultation with the City Administrator, and shall include tuition, materials, and books. It shall be reimbursed to the Employee upon evidence of a passing grade. The approval of educational reimbursement is not automatic; it is a discretionary benefit. The intent of the educational reimbursement policy is to cover the cost of individual classes only, on an infrequent basis. This policy is not intended to cover the costs associated with the pursuit of associate, undergraduate, graduate, or professional degree programs. Educational reimbursement, per this section, is academic in nature and is distinct from job related training, workshops, seminars, classes and/or conferences.

B. MILITARY LEAVE

An Employee who is a member of the National Guard, or is in a reserve component of the Armed Forces of the United States, or of the Public Health Services, shall be entitled to a leave of absence from City service for a period not exceeding 15 calendar days in any one (1) calendar year period. Such leave shall be granted without loss of time, pay, or other benefits to which the Employee is entitled. When an Employee receives bona fide orders to temporary active or training duty, such military leave longer than 15 days in any calendar year shall be granted without City pay.

C. BEREAVEMENT LEAVE

Bereavement leave of three (3) days is authorized in case of a death in the immediate family. Immediate family is defined as spouse, child, parent, parent-in-law, brother or sister.

D. COURT APPEARANCE

Any Employee required to appear in court or before the Grand Jury as a juror, witness in a criminal case, or witness in a civil case for the purpose of giving testimony shall



receive full compensation as though he were actually on the job during such time. He/she shall claim any witness or other fee to which he/she may be entitled by reason of such appearance and pay the same over to the City Treasurer to be deposited in the general fund.

E. LEAVE OF ABSENCE WITHOUT PAY

City Employees may apply for a leave of absence without pay for illnesses not otherwise covered by the City's family/medical leave policy, emergencies, or other compelling reasons. The City Administrator will review the request and determine whether to approve the leave. All applicable leave balances (i.e., sick, vacation, compensatory) must be exhausted before the leave without pay begins.

1. Reinstatement: Except for a leave of absence without pay of less than 90 days duration, the Employee's position will not be held open. For leaves beyond 90 days duration, the Employee must apply for reinstatement and will then be reinstated into the first available position of a similar classification and pay as the position vacated.
2. Benefit accruals: No vacation, sick leave, retirement, or other benefits will be paid or accrued during periods of leave without pay.



SECTION 6: EMPLOYEE EVALUATION

6.1 EVALUATION PROCEDURES

A. STANDARD PROCEDURES

Full-time Employees shall receive a job performance evaluation at six months service and thirty (30) days prior to one year of service. Thereafter, performance evaluations shall be conducted annually at the Employee's anniversary date. With the approval of the City Administrator, the dates of performance evaluations may be extended when 1) the Employee's performance needs improvement, and the Supervisor, with the concurrence of the City Administrator, determines that it is in the best interest of the City and the Employee to grant an extension to allow for improvement; 2) the Employee is on a leave of absence without pay for more than 30 days; and 3) when circumstances indicate that the Employee has not had adequate time to demonstrate suitability for regular status or continued employment.

Each Employee will be evaluated to assess the performance of that Employee in the job being performed for the City. Each evaluation will be given on the basis of the direct Supervisor's observations of the Employee's performance, the accuracy of the Employee's work in addition to the quantity and quality of the work. Each Supervisor will seek the input of other City personnel and input, where appropriate, from others outside of the City workforce who have an on-going knowledge of the Employee's work.

1. The City Administrator shall provide to each Supervisor an appropriate Employee Appraisal Form.
2. The Supervisor shall perform the following:
 - a. Review the Employee's job description;
 - b. Review Employee's Goals from the previous appraisal period.
 - c. Complete the Employee Performance Appraisal Form
3. The Employee will also complete a self-evaluation on the Employee Performance Appraisal Form.

B. EVALUATION

Each evaluation shall conclude with a meeting between the evaluated Employee and the immediate Supervisor in which the Employee will be provided with the written evaluation prepared by the Supervisor. The Employee will be given an opportunity to respond to the evaluation. The Supervisor will establish performance goals for the Employee for the next year and detail any work improvements or continuing professional development needs of the Employee.



6.2 APPEAL

Any Employee shall have the right to appeal his/her performance evaluation to the City Administrator by submitting his/her concerns in writing. The City Administrator shall meet with the Employee to discuss the Employee's concerns. The City Administrator shall issue a written finding, either upholding the Employee's performance evaluation, or returning it to the Supervisor for changes or revision. Any written materials from this process shall become part of the Employee's personnel file. The City Administrator's written finding shall be final and there shall be no further right of appeal.



SECTION 7: STANDARDS OF CONDUCT

7.1 PURPOSE

This policy shall assure that all Employees are aware of important policies, procedures and regulations governing their employment with the City. In addition, the City expects that this policy shall ensure that Employees at all times conduct themselves in a manner that reflects favorably on the City and builds and supports the integrity and credibility of the City organization. Violation of any of the policies included in this Section may be grounds for disciplinary action, up to and including termination of employment, depending upon the severity of the violation.

7.2 SAFETY POLICY

Safety and health is the primary concern and responsibility of every Employee working for the City. The City recognizes its obligation to provide adequate safety equipment, to train Employees in safe operations and practices, and to establish and enforce safety regulations.

All Employees are obligated to perform their assigned duties safely by following established safe work procedures, using the proper safety equipment, and by reporting or correcting unsafe acts or workplace conditions.

7.3 CONFLICT OF INTEREST

City Employees are expressly prohibited from engaging in any activities which could represent a conflict of interest with their City employment.

It is the responsibility of the Employee to notify his/her Department Head when the Employee's circumstances or work assignment change and create a situation wherein a conflict of interest may arise. The Department Head will notify the City Administrator in writing of the potential conflict. The City Administrator, in consultation with the City Attorney, shall make recommendation to the Mayor and Council as to what action should be taken to avoid the potential conflict of interest.

7.4 CONFIDENTIALITY OF RECORDS

Employees having access to confidential records such as personnel actions, medical records, payroll records, etc., shall maintain strict confidentiality of such records. City records may only be released or disseminated by the Mayor, City Administrator or City Clerk in accordance with the public records laws of the State of Idaho.

7.5 HARASSMENT POLICY

The purpose of this policy is to set forth the City's position prohibiting harassment by or against any of its Employees or applicants. The City's harassment policy is in keeping with the City's commitment to provide a work environment that is free of discrimination. The City prohibits



harassment in any form, including verbal, physical and visual harassment.

- A. Sexual harassment includes, but is not limited to, making unsolicited and unwelcome sexual advances, requests for sexual favors and/or other verbal, physical, or visual conduct of a sexual nature which occurs under the following circumstances:
 - 1. Submission to such conduct is explicitly or implicitly made a term or condition of employment; or
 - 2. Submission to or rejection of such conduct is used as the basis for employment decisions affecting the Employee or applicant; or
 - 3. Such conduct has the purpose or effect of substantially interfering with the individual's performance and/or creating an intimidating, hostile or offensive work environment.
- B. Racial or ethnic harassment includes, but is not limited to, ethnic slurs, jokes or other verbal or physical conduct relating to an individual's race, national origin, or ancestry where such conduct:
 - 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
 - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - 3. Otherwise adversely affects an individual's employment opportunities.
- C. Also similarly prohibited is any form of harassment against a person because of that person's religious creed, physical handicap, medical condition, sexual orientation, marital status or age.

Guidelines:

- A. An Employee who believes that he or she has been harassed by a co-worker, Supervisor, any City official, or individual outside of the City organization, should immediately notify his/her Department Head of the facts of the incident or incidents and the name(s) of the individual(s) involved.
- B. If the complaint is against the Employee's Department Head, the Employee should report it directly to the City Administrator. If the complaint is against the City Administrator, or a member of the City Council, the Employee should report the complaint to the Mayor. If the complaint is against the Mayor, the Employee should report it to the President of the Council.
- C. A Supervisor or Department Head who is notified of a complaint or otherwise becomes aware of a violation of this policy must immediately notify the City Administrator. Failure to do so may result in disciplinary action up to and including termination.
- D. Once an incident has been brought to the attention of management, an investigation will be conducted by the City Administrator's office or other person designated by the City Administrator or the City Council to determine all the facts surrounding the



incident including, but not limited to, the totality of the circumstances, the nature of the conduct, and the context in which the alleged incident occurred. The City has the right to retain an independent third party to conduct the investigation.

- E. If the complaint is against a patron of City services, the City will take those steps within its power to investigate and eliminate the problem.
- F. If a violation of this policy is found to have occurred, the Employee who is found to have violated this policy will be subject to discipline, up to and including termination.
- G. Retaliation: Retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited. Employees found to be retaliating against another Employee shall be subject to disciplinary action, up to and including termination.

7.6 SUBSTANCE ABUSE

The City maintains a "zero-tolerance" policy toward the use or possession of illegal substances and toward an Employee being impaired or incapacitated by alcohol or any other controlled substance.

The unauthorized possession, consumption, transfer or sale of any illegal drug shall be grounds for immediate disciplinary action.

An Employee may not, under any circumstances, report to work impaired by or under the influence of alcohol or any illegal or controlled substance. Any Employee who does report to work under the influence of alcohol or any illegal or controlled drug will be relieved of duty and subject to disciplinary action.

7.7 OUTSIDE EMPLOYMENT

The City Administrator shall have the authority to limit outside employment activities of City Employees when in his/her judgment that employment would create a potential conflict of interest, a potential breach of confidentiality on substantive matters of City business, or would have the potential to detrimentally affect the Employee's ability to perform for the City. Prior to engaging in outside employment, City Employees must submit a written request to the City Administrator who shall approve or deny the request within five working days.

7.8 PROPRIETARY RIGHTS

Any and all work products including software design, reports, and research analysis completed by City Employees while in the employ of the City are deemed to be the property of the City. No Employee may sell, copy, or otherwise use such information for outside economic gain without the express written consent of the City.



7.9 DRESS AND PERSONAL GROOMING

Employees shall at all times dress in a manner which reflects a professional image of the City. Clothing should reflect commonly accepted office standards and Employees should be well groomed at all times. Items including, but not limited to: halter tops, "spaghetti straps," extremely short shorts, spandex shorts, or worn or soiled jeans are neither appropriate nor acceptable during working hours. Employees in violation of this policy will be required to leave the premises and return in appropriate attire, and time taken to comply with this requirement will be at the Employee's own expense.

7.10 SMOKE-FREE WORK ENVIRONMENT

It is the policy of the City to create and maintain a safe and healthful work environment. Therefore, the City is a smoke-free workplace. Consistent with this policy, all City buildings and vehicles are designated no-smoking areas. Employees desiring to smoke may do so in offsite locations during their normal lunch or break periods.

7.11 GRATUITIES

No Employee shall accept any fee, gift, or other valuable item in the course of performing the duties of his/her position. Employees may accept such items as candy, cake, cookies, or other items of nominal value which are intended to be appreciative in nature and which are made available for general office consumption or use. Meal expenses related to the conduct of City business are exempt from this policy if approved in advance by the Department Head.



SECTION 8: DISCIPLINE

8.1 POLICY AND PURPOSE

The purpose of this policy is to establish a disciplinary system to assure a fair and consistent procedure for the prevention and correction of Employee performance deficiencies. It is the policy of the City to promote a positive discipline process wherein the objective is to assist the Employee to succeed in his/her responsibilities whenever possible.

8.2 SUPERVISORY RESPONSIBILITY

It is the responsibility of each Supervisor to identify, evaluate, and institute measures to correct performance deficiencies. Supervisors are expected to utilize the following strategies:

1. Communicate and explain the City's expectations and performance standards.
2. Communicate and explain the City's disciplinary policies.
3. Provide Employee training, recognition, and feedback on performance standards.
4. Conduct periodic performance reviews and appraisals.

8.3 APPLICABILITY

This policy shall apply to all regular full-time and regular part-time Employees. It shall not apply to the City Administrator, City Clerk, City Treasurer, City Attorney, or any seasonal or temporary Employees, paid call firefighters or volunteers.

8.4 CAUSES FOR DISCIPLINARY ACTION

Any action or inaction which is a hindrance to the effective performance of City operations, or reflects discredit upon the City or its Employees, will be considered just cause for disciplinary action. Disciplinary action may be taken for (but is not limited to) the following actions:

1. Violation of any City policy, rule, or regulation, contained in these Personnel Policies or in any other City communication of general distribution.
2. Violation of the Drug-Free Workplace Policy.
3. Violation of lawful duty.
4. Insubordination, including refusal to obey a reasonable order and promoting work unit insubordination.
5. Absence from the workplace without prior authorization (unexcused or excessive absenteeism).
6. Habitual tardiness or absences.
7. Abuse of sick leave benefits.
8. Failure to perform assigned work in an efficient and acceptable manner.
9. Abusive language or conduct toward the public or fellow Employees, or other conduct unbecoming a City Employee, including disrespect toward Supervisory or other authority, disorderly conduct, disregard or neglect of duties, abuse of



authority over other Employees, or on or off-duty conduct which may bring discredit to the City.

10. Being wasteful of City materials, property, or time.
11. Unacceptable interpersonal skills, to the extent that the workplace environment is below standard.
12. Conviction of a work related felony.
13. Use of religious, political, or fraternal influence for personal gain.
14. Theft.
15. Personal acceptance of a fee, gift, or other valuable item in the course of the employee's work for the City.
16. Release of confidential information.
17. Falsification of forms, records, or reports, including but not limited to time cards or job applications.
18. Participating in unlawful harassment toward any member of the City staff or the public, including but not limited to sexual or racial harassment.
19. Violation of safety laws, regulations, or guidelines.
20. Use of position, City property, or confidential City information for personal gain; or for the gain of others.

8.5 FORMS OF DISCIPLINARY ACTION

Disciplinary action may take any of the following forms, in any order, depending upon the seriousness of the infraction, the Employee's previous work history and longevity, and other relevant factors. Progressive discipline shall be applied only where the Supervisor believes that the potential for improvement and curative behavior is possible.

- A. Oral reprimand: An oral reprimand is a warning rather than a punitive action, and is designed to prevent the Employee from being placed in a position where formal discipline must be used. A Supervisor may make a brief note documenting the conversation and will retain the note for future reference. Documentation of an oral reprimand will not be placed in the Employee's personnel file.
- B. Written reprimand: A written reprimand is also intended to be a warning procedure; however, the written reprimand also serves to place the Employee on official notice that future abuse will result in a more severe form of disciplinary action. As such, the written reprimand will be placed in the Employee's personnel file.
- C. Suspension without pay: Suspension without pay is a form of discipline which is usually taken either after a written reprimand has failed to correct the performance deficiency or when the severity of the violation is such that it warrants a suspension without pay.
- D. Disciplinary probation: Disciplinary probation is a form of discipline which is usually taken when a written reprimand or suspension without pay have failed to correct the performance deficiency or when the severity of the violation is such that it warrants it. Disciplinary probation consists of placing an Employee back on



probationary status. The Employee loses regular status, and must bring his/her performance up to a "Standard" rating in order to regain regular Employee status.

- E. Salary reduction: A reduction in salary is the reduction of the Employee's salary to a lower step on the salary range to which his/her position is assigned. This form of discipline may be used for any length of time that the City Administrator deems appropriate, and is generally but not exclusively used when it is advantageous to have the Employee on the job but the seriousness of the violation or performance problem warrants more disciplinary action than a written reprimand.
- F. Involuntary demotion: A demotion to a lower classification may be used as a form of disciplinary action, when dismissal is not warranted, or when the Supervisor feels that the Employee has the potential for correcting the misconduct. When demotion to a lower classification occurs, the salary of the Employee will be equal to, or less than, the Employee's present salary, at the discretion of the Supervisor and City Administrator.
- G. Dismissal: Dismissal from City service may be necessary after other attempts to correct the performance deficiencies have failed or when the seriousness of the infraction is such that dismissal is warranted.

8.6 ADMINISTRATION OF DISCIPLINE

The following is a list of positions with the authority to impose discipline

1. The Employee's Supervisor may administer an oral reprimand and a written reprimand and recommend other levels of discipline.
2. Consistent with 8.7 below, the City Administrator will review and approve all recommendations for suspensions without pay, disciplinary probations, reductions in salary, involuntary demotions, and dismissals from City service.

8.7 INFORMAL REVIEW

A regular, full-time Employee shall have the right to an Informal Review regarding disciplinary actions consisting of suspension without pay, disciplinary probation, salary reduction, involuntary demotion, or dismissal from City employment within 5 working days after receiving notification of the proposed disciplinary action.

The following steps shall be followed in submitting and processing a request for an Informal Review. For purposes of this Informal Review process, the City Administrator shall be deemed to be the Department Head for all Employees. The Chief of Police shall be deemed to be the Department Head for the Police Department; the Fire Chief shall be deemed the Department Head for the Fire Department; and the Community Development Director shall be deemed the Department Head for the Community Development Department.



- Step 1: In disciplinary actions imposed by the Department Heads, the affected Employee may submit a request for an Informal Review of the disciplinary action to the City Administrator within five (5) working days after receiving notification of the proposed disciplinary action. The Department Head shall review the Employee's request for an Informal Review and provide to the City Administrator any and all relevant information regarding the proposed disciplinary action within three (3) days after notification of the Employee's request for an Informal Review.
- Step 2: The City Administrator shall meet with the affected Employee and the Department Head to review the reasons for the proposed disciplinary action and any relevant information the Employee desires to submit in connection with the disciplinary action or the information and/or events upon which the proposed disciplinary action is based.
- Step 3: Upon the conclusion of the Informal Review, the City Administrator shall prepare his decision in writing upholding, modifying, or rescinding the proposed disciplinary action.
- Step 4: If the affected Employee is dissatisfied with the decision of the City Administrator, then the Employee may request that the City Administrator's decision be informally reviewed by the Mayor within five (5) working days after receiving the City Administrator's decision. The Mayor shall meet with the City Administrator and the Employee, review the Employee's written material and relevant information regarding the proposed disciplinary action and provide his written decision within three (3) days after the meeting. The decision of the Mayor shall be final and binding.

In the event of disciplinary action proposed by the City Administrator acting in the capacity of the Department Head, such proposed disciplinary action shall be reviewed directly by the Mayor consistent with Step 4, above. The decision of the Mayor shall be final and binding.

If the request for an Informal Review is not initiated within the time limits established by this Section, then the right for an Informal Review shall be deemed to be waived. Any disciplinary action not taken to the next step of the Informal Review procedure within the time limits established by this Section shall be considered settled on the basis of the last decision made.

The time limits prescribed in this Section for the initiation and completion of the steps of the Informal Review procedure may be extended for a reasonable amount of time by the reviewing City Employee.



APPENDIX A

MEDICAL INSURANCE PLAN

CITY STAFF HEALTH REIMBURSEMENT ARRANGEMENT ANNUAL ROLLOVER AND PORTABILITY POLICY

Regence BlueShield of Idaho has been selected by the City of Sun Valley to provide health insurance for its full-time regular employees (at least thirty (30) hours or more per week). The Health insurance plan includes a Health Reimbursement Arrangement (HRA) program. Individual employee HRA accounts are established and annually the city appropriates funds to the HRA account to help pay for employee deductibles.

It is the City's policy that at the end of each fiscal year, any unused appropriation funds in an individual's HRA account may be rolled over into the next fiscal year. The maximum amount that may be rolled over each year is seventy percent (70%) of the remaining funds. The funds may be used in subsequent years for medical costs as authorized by Regence BlueShield.

Vesting of rollover funds occurs at the completion of three (3) years of full-time employment. Rollover funds will at that time become available as a profitability payment to an employee should the employee leave City employment. After year three (3), an employee, upon employment termination, will be provided a payment of up to \$1,500 of any vested rollover funds. At the end of five (5) or more years of employment, an employee will be entitled to payment of up to \$5,000 of any vested rollover funds.

An employee receiving a profitability payment may choose to either have the payment made as income and, therefore, subject to all applicable payroll taxes and payroll benefits or the employee may select that a payment or payments be made directly for another health insurance plan.

MAYOR & COUNCIL HRA PROGRAM

The Mayor and Council are full-time employees of the City and are eligible to receive health insurance benefits equal to those provided to other employees. In addition, the Mayor & Council may select to provide for their health insurance coverage through an existing health insurance program of their own or through a spouse's health insurance program. If one of these options is selected, the Mayor and/or Councilperson(s) may still participate in the City's Health Reimbursement Arrangement (HRA) program as follows:¹

¹The Mayor and Council are considered a unique class under this policy and, therefore, other employees are not eligible for this HRA Program.



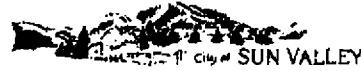
1. The City will establish an individual HRA account for the Mayor and/or Councilperson and contribute \$1,217.40 per month to the account. The maximum total contribution over a twelve month period is \$14,608.80 and the ²period of time will be from January 1 through December 31²
2. The HRA account may be used by the Mayor and/or Councilperson(s) for the reimbursement of their health insurance premiums and/or deductibles including all dependents on the program.
3. The Mayor and/or Councilperson(s) must present to ISC, the City's HRA account managers, acceptable proof of health insurance premium payment in order to be reimbursed (i.e. payroll documentation or premium invoice).
4. The Mayor and/or Councilperson(s) must present to ISC acceptable proof of deductible payment in order to be reimbursed (i.e. doctor's receipt or Explanation of Benefits (EOB) from health insurance provider.)
5. ISC will be responsible for verifying receipts and payroll deduction documentation and will make timely reimbursements for all eligible health insurance premium costs and deductibles and deductibles.

² The monthly and maximum annual City Contribution to the HRA accounts is calculated based upon the current per employee and dependent *premium costs* charged by Regence BlueShield of Idaho (Health Insurance) and MetLife (Dental Insurance) for City employees and the City's share of paid deductibles in the current 2004/05 health insurance policy.

Dental	Health
	Employee: \$ 263.00/month
\$ 25.80	Spouse: \$ 316.00/month
\$ 23.70	Children: \$ 354.00/month (or \$118/month/child up to 3 children) \$ 30.00
Total per month:	\$ 933.00
\$ 84.40 (family)	
\$1,012.80	Total per year: \$ 11,196.00
Plus: City Deductible Payment:	\$ 2,400.00
Total Annual HRA Account Contribution:	\$ 14,608.80
Total Monthly HRA Account Contribution:	\$ 1,217.40



6. The maximum total reimbursement for the twelve-month HRA period is \$14,608.80.
7. At the end of the twelve-month period, or at anytime that the elected term of the Mayor and/or Councilperson(s) should end, any remaining funds in the Mayor's or Councilperson(s) HRA account will revert back to the City and will be forfeited by the Mayor and/or Councilperson(s) if they do not have outstanding receipts to withdraw those funds. There is no rollover provision provided in this program.



APPENDIX B

FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Rights and obligations, which are not specifically set forth below, are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA.

A. Definitions

1. "12-month period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
An Employee's child is one for whom the Employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or stepchild.
3. A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing, and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.
4. "Parent" means the biological parent or an Employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an Employee when the Employee was a child. This term does not include parents-in-law.
5. "Spouse" means a husband or wife as defined or recognized under Idaho State law for purposes of marriage.
6. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
 - a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery there from); or
 - b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:



- i) A period of incapacity (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
- ii) Treatment two or more times by a health care provider, by a nurse or physicians assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral, by a health care provider; or
- iii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

Any period of incapacity due to pregnancy or for prenatal care.

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- i) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The Employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

7. "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or



surgery by the State of Idaho;

- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of Manual manipulation of the spine to correct a subluxation as demonstrated by X-rays to exist) authorized to practice in Idaho and performing within the scope of their practice as defined under State law;
- 2) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- 3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 4) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

B. Reasons for Leave

Leave is only permitted for the following reasons:

- 1) The birth of a child or to care for a newborn of an Employee;
- 2) The placement of a child with an Employee in connection with the adoption or foster care of a child;
- 3) Leave to care for a child, parent, or a spouse who has a serious health condition; or
- 4) Leave because of a serious health condition that makes the Employee unable to perform the functions of his/her position.

C. Employee's Rights to Leave:

An Employee is eligible for leave if the Employee:

- 1) Has been employed for at least 12 months; and
- 2) Has been employed for at least 1,250 hours during the 12 month period immediately preceding the commencement of the leave.



D. Amount of Leave:

Eligible Employees are entitled to a total of 12 workweeks of leave during any 12-month period.

E. Minimum Duration of Leave

If leave is requested for the birth, adoption, or foster care placement of a child of the Employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an Employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions. If leave is requested to care for a child, parent, spouse or the Employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

1. Spouses Both Employed by the City

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12 month period if leave is taken for the birth or placement for adoption or foster care of the Employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

F. Employee Benefits While on Leave:

Leave under this policy is unpaid; however, the Employee may use sick, vacation, and/or compensatory time as determined by the City. While on leave, Employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the Employee is on the job.

If an Employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire period, unless the Employee does not return because of the continuation, recurrence, or onset of a serious health condition of the Employee or his/her family member which would entitle the Employee to a leave, or because of circumstances beyond the Employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid, wages, vacation pay, etc.).

G. Substitution of Paid Accrued Leaves:

While on leave under this policy, as set forth herein, an Employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an Employee to concurrently use paid accrued leave after requesting FMLA leave, and may also require



an Employee to use Family and Medical Care Leave concurrently with a non-FMLA leave which is FMLA qualifying.

1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave: Where an Employee has earned or accrued paid vacation, administrative leave, compensatory time, or sick leave, that paid leave may be substituted for all or part of any otherwise unpaid leave under this policy.
2. As for sick leave, an Employee is entitled to use sick leave concurrently with leave under this policy if:
 - a) The leave is for the Employee's own serious health condition; or
 - b) The leave is needed to care for a parent, spouse, or child with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.
3. The City's Right to Require an Employee to Use Paid Leave When Using FMLA Leave: Employees must exhaust their accrued leaves concurrently with FMLA leave to the same extent that Employees have the right to use their accrued leaves concurrently with FMLA leave, with two exceptions:
 - a) Employees are not required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
 - b) Employees will only be required to use sick leave concurrently with FMLA leave if the leave is for the Employee's own serious health condition.
4. The City's Right to Require an Employee to Exhaust FMLA Leave Concurrently With Other Leaves: If an Employee takes a leave of absence for any reason which is FMLA qualifying, the City may designate that non-FMLA leave as running concurrently with the Employee's 12-week FMLA leave entitlement.
5. City's and Employee's Rights If an Employee Requests Accrued Leave Without Mentioning the FMLA: If an Employee requests to utilize accrued vacation leave or other accrued time off without reference to a FMLA qualifying purpose, the City may not ask the Employee if the leave is for a FMLA qualifying purpose. However, if the City denies the Employee's request and the Employee provides information that the requested time off is for a FMLA qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA qualifying, the City may require the Employee to exhaust accrued leave as described above.
6. Medical Certification: Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care if requested by the City.



If the leave is requested because of the Employee's own serious health condition, the certification must include a statement that the Employee is unable to work at all or is unable to perform the essential functions of his/her position.

- a) Time to Provide a Certification: When an Employee's leave is foreseeable, and at least 30 days notice has been provided, if a medical certification is requested, the Employee must provide it before the leave begins. When this is not possible, the Employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the Employee's diligent, good faith efforts.
 - b) Consequences for Failure to Provide an Adequate or Timely Certification: If an Employee provides an incomplete medical certification, the Employee will be given a reasonable opportunity to cure any such deficiency. However, if an Employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA leave until the required certification is provided.
 - c) Recertification: The City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third party provider, jointly approved by the City and the Employee, but paid for by the City. The opinion of the third provider will be binding. An Employee may request a copy of the health care provider's opinions when there is a recertification.
7. Intermittent Leave or Leave on a Reduced Leave Schedule: If an Employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the Employee must provide medical certification that such leave is medically necessary. "Medically necessary" means that there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

Employee Notice of Leave: Although the City recognizes that emergencies arise which may require Employees to request immediate leave, Employees are requested to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an Employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn) the Employee shall inform his/her Supervisor as soon as possible that such leave will be needed. Such notice may be given orally. If the City determines that an Employee's notice may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.



Right to Reinstatement: Upon expiration of leave, an Employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the Employee had been continuously employed during the FMLA period.

Reinstatement Upon Return from Leave: If a definite date of reinstatement has been agreed upon, at the beginning of the leave, the Employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the Employee and the City, the Employee will be reinstated within two business days, where feasible, after the Employee notifies the employer of his/her readiness to return.

Employee's Obligation to Periodically Report on His/Her Condition: Employees may be required to periodically report on their status and intent to return to work. This will help to avoid any delays to reinstatement when the Employee is ready to return.

Fitness for Duty Certification: As a condition of reinstatement of an Employee whose leave was due to the Employee's own serious health condition, which made the Employee unable to perform his/her job, the Employee must obtain fitness for duty clearance from his/her health care provider that the Employee is able to resume such work. Subsequent to obtaining such certification from his/her own health care provider, the Employee must present this certification to the City physician who will issue a return to work certification. Failure to provide such certification will result in denial of reinstatement.

Reinstatement of "Key Employees": The City may deny reinstatement to a "key" Employee (i.e., an Employee who is among the highest paid 10% of all Employees of the City within 75 miles of the worksite) if such denial is necessary to prevent substantial economic cost to the operations of the City, and the Employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

Required Forms: Employees must fill out or provide the following applicable forms in connection with leave under this policy. These forms should be submitted to the Employee's Supervisor, who will forward the request to the City Administrator's Office. Employees must complete a "Request for Family or Medical Leave Form" prepared by the City. NOTE: EMPLOYEES WILL RECEIVE A RESPONSE TO THEIR REQUEST FROM THE CITY, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE. Employees must also turn in a Medical certification - either for the Employee's own serious health condition or for the serious health condition of a child, parent, or spouse, and must have on file an authorization for payroll deductions for benefit plan coverage continuation.



APPENDIX C

LIFE INSURANCE PROGRAM

United Heritage has been selected by the City of Sun Valley to provide life insurance for its full-time employees. Coverage for this insurance is provided by the City of Sun Valley and at no cost to employees. The amount of the life insurance provided is in the amount of \$50,000 per employee, however, the amount of the life insurance provided is reduced according to age once the employee reaches the age of 65.

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

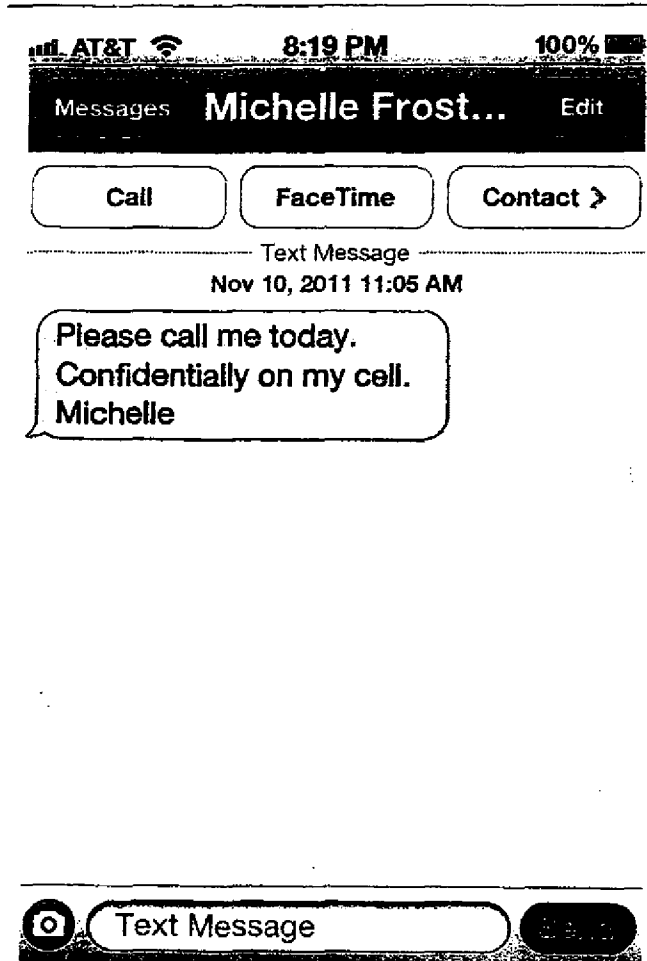


EXHIBIT 5
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 5
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000086

From: Adam King [mailto:abk@ketchumlegal.com]
Sent: Wednesday, November 16, 2011 7:21 AM
To: Michelle Frostenson
Subject: Re: annual/sick leave

Thanks. Please bring documentation and be prepared to present Thursday.
Adam

// mobile please excuse typos //

On Nov 15, 2011, at 11:48 PM, "Michelle Frostenson" <mfrostenson@svidaho.org> wrote:

Adam,

Tonight I put together the annual leave/sick leave that hasn't been claimed over the past three years for Sharon. It came to 56 days or 448 hours or \$25,984 at her current rate of pay. I have email documentation to back up every one of these days. I have another 20 emails for half days but I didn't include them. I have printed it all off and am mailing it to you tomorrow.

I also have every email she has sent me requesting vacation pay outs or claimed vacation. I will include them and a copy of her leave time report from the accounting system. Sharon also reviews the leave time reports each pay period and signs off on them so she can't say that she didn't know that her vacation wasn't being recorded.

Some of the time off was for on-call fire fighter training and as far as I can tell, she got paid both as city administrator for those hours and as an on-call fire fighter. In order to prove that, time cards will have to be requested from the fire department. All I ever get is a total number of hours to pay out on each fire fighter. During one month where she took a ropes training course for an entire week and didn't claim any time off, she was paid for 32 hours from the fire department. That is an unusually high number of hours for an on-call fire fighter but I can't say for certain the hours were for the ropes course.

*Michelle Frostenson
Treasurer/Finance Manager
City of Sun Valley
208-622-4138 (cell office)
208-622-4600 (home office)*

HAMMER 000086

EXHIBIT 6
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 6
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Sent: Tuesday, November 15, 2011 1:00 PM To: 'Adam King'
Subject: Important please read and respond!
Importance: High
Adam,

Is Sharon Hammer going to continue her position as City Administrator during the internal investigation?

If she is, I hereby request a paid leave of absence until this issue is completely resolved, and she is no longer employed by the City of Sun Valley.

I was told when I came forward with the recording of Sharon Hammer's transgression, that the level of her misconduct warranted immediate dismissal from her position. That has apparently been overlooked or flat out ignored.

I was also told that I would be protected, and thanked emphatically for coming forward and "doing the right thing".

You yourself told me that I was a "hero".

I cannot work at City Hall with her and the Mayor joining forces to deny all of her misconduct.

I have not received a single email or call from the Mayor asking me how I am doing, or giving me any kind of a status update. Staff has been cold and yesterday Sharon talked with several staff one on one to garner support for her "cause". Diane Shay, who was in complete support of exposing Sharon's unethical behavior leading up to this, came out of her office crying yesterday after a "closed door session" with a complete change of heart regarding Sharon's termination. Sharon Hammer spoke to everyone in the office yesterday but me. Sharon has bullied and harassed me for the past 3 years. The City has become a very hostile and toxic work environment. This current arrangement is intolerable. After all of the allegations against Sharon, AND the recording of her wrongdoing, she CONTINUES TO WORK at the City, with access to each and every City document (even the ones in question!).....
Sharon still runs the show.

This entire debacle reeks of dishonesty and corruption. I find the way this has been handled to be unacceptable, and I will be forwarding this email to all Council members and Council Elect unless you provide me with a very good reason not to.
Sincerely,

Kelly Ek, CMC
City Clerk
City of Sun Valley
208.622.4438 ext. 19

EXHIBIT 7
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 7
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

N&H WP/AC

To: Kelly Ek, City Clerk, City of Sun Valley

From: Dewayne Briscoe, Nils Ribi, Bob Youngman

Date: November 10, 2011

Re: Special Council Meeting

We wish to call a Special Meeting of the Sun Valley City Council on Friday November 11, 2011 at 2:00 pm, pursuant to Idaho Code 50-706 for the purpose of an Executive Session under Idaho Code section 67-2345-1 (b).

EXHIBIT 8
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

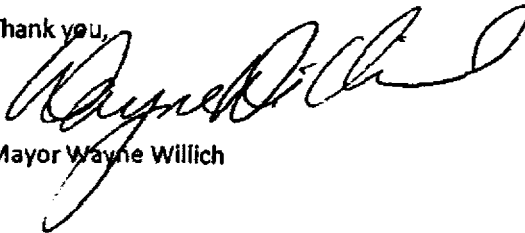
EXHIBIT 8
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

November 18, 2011

Dear Sharon:

Effective immediately you are being placed on paid administrative leave until further notice from your position as City Administrator and paid on-call firefighter/EMT. Please deliver all City of Sun Valley property in your possession to City Hall immediately, including but not limited to cell phones, keys, iPads, computers, computer files/computerized records, papers, telephones, pagers, fire equipment, EMT equipment, and any other property in your possession which belongs to the City of Sun Valley. This is not a disciplinary action.

Thank you,



Mayor Wayne Willich

EXHIBIT 9
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 9
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000191

From: sharonrhammer <sharonrhammer@aol.com>

To: wwillich <wwillich@svidaho.org>

Subject: Newspaper comments re: administrative leave

Date: Fri, Dec 2, 2011 10:56 am

Mayor: In each of the last two newspaper articles on the investigation and lawsuit the newspaper has stated that I was placed on administrative leave pending investigation of me for improper use or misappropriation of city funds. In Wednesday's paper they quoted Council Ribí saying that is the reason I was put on administrative leave. This is exactly the concern I raised to you regarding placing me on administrative leave and the potential damage to my professional reputation. You told me specifically that I was being placed on administrative leave not because of anything that I had done wrong but to protect me from Councilman Ribí.

Jim has spoken to the newspaper and tried to get this point across but they have not reported it accurately.

I am asking you to PLEASE contact the newspaper and explain to them why I was placed on administrative leave. The potential permanent damage to my professional reputation is of great concern to me.

Thank you,
Sharon Hammer

EXHIBIT 10
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 10
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Wednesday, November 30, 2011

Sun Valley councilman responds to lawsuit

Ribi denies claims made by city administrator

By GREG MOORE
Express Staff Writer

An internal investigation of Sun Valley City Administrator Sharon Hammer's "possible misuse of public funds and equipment" was the cause of her being placed on administrative leave two weeks ago, according to an affidavit filed in Blaine County 5th District Court by Sun Valley City Councilman Nils Ribi.

The affidavit is part of a rapidly developing spat between Ribi and Hammer that has produced allegations of dangerous mental instability against Ribi and defamation against Hammer.

Ribi's affidavit was filed Nov. 23 in opposition to a motion for a temporary restraining order seeking an end to Hammer's suspension and to the investigation. The motion and a \$1 million lawsuit against the city were filed on Nov. 21 by attorney Jim Donoval, a Republican candidate for state Senate last year and Hammer's husband. The suit alleges that Ribi physically threatened Hammer and tried to get her fired in retaliation for complaining about his behavior.

In his affidavit, Ribi denied those accusations.

He also stated that City Treasurer Michelle Frostenson told him (at an unspecified date) that she had "uncovered evidence that indicated possible wrong doing by the Plaintiff." He said three council members set an executive session to hear that evidence on Nov. 11. Hammer was placed on administrative leave by Mayor Wayne Willich on Nov. 18.

"...[T]he Mayor and Council had reason to believe that the Plaintiff may have committed serious misconduct, including possible criminal violations of statutes dealing with the misuse of public funds and falsification of public records," the affidavit states. "... Because the Plaintiff, in the position of City Administrator, has unfettered access to the records of the City of Sun Valley, including records which may be essential to a determination of whether or not improprieties, misconduct and/or criminal action have been committed by the Plaintiff, it was and is essential that she be placed on administrative leave and ordered not to be in Sun Valley City [H]all until appropriate investigative measures have been completed."

The affidavit states that the administrative leave is not a disciplinary action.

The affidavit does not specifically state the nature of Hammer's alleged misuse of public funds. However, a letter attached to it allegedly written by Donoval on Nov. 12 to Mayor Wayne Willich and copied to City Council members, states that "the two main allegations of impropriety described to Ms. Hammer was (sic) that Ms. Hammer somehow violated City of Sun Valley vacation pay and use of City of Sun Valley automobile policies." The letter also states that "Ms. Hammer un-categorically (sic) denies any such allegations."

The letter also states that "[s]hould the allegations and proceedings against Ms. Hammer proceed any further, Ms. Hammer will present multiple public officials, Sun Valley employees, and private individuals who have all disclosed to Ms. Hammer that Mr. Ribi has a long history of mental and emotional illness, is verbally abusive, is otherwise unstable, and is most likely emotionally incompetent to assume the public position that he now possesses or any public position he seeks in the future."

Another letter attached to Ribi's affidavit allegedly written by Donoval on Nov. 16 states that "[t]here is no question that due to Mr. Ribi's tenuous emotional health that Mr. Ribi is dangerous to City of Sun Valley employees, and in particular to Ms. Hammer."

Ribi has hired Hailey attorney Keith Roark to address allegedly defamatory statements made by Donoval. In a letter to Donoval dated Nov. 21, Roark stated that "Mr. Ribi has

never been diagnosed [with] or treated for any emotional or psychological illness. ..." The letter demands that Donoval retract his allegations of mental instability on Ribi's part in letters sent to the recipients of his Nov. 12 and Nov. 16 letters.

Roark's letter points out that Idaho law precludes the filing of a lawsuit in court against a municipality until a tort claim has been filed with the municipality. Roark contends that no such claim was filed.

"Should you choose to file your 'complaint,' we are prepare[d] to have it dismissed summarily and will bring an appropriate action for malicious prosecution in addition to our claims for defamation and false light invasion of privacy", in his letter.

In an email to the Idaho Mountain Express, Donoval said a hearing on his motion for a temporary restraining order, originally scheduled for Nov. 23, would be rescheduled for sometime this week.

Greg Moore: gmoore@mtexpress.com

EXHIBIT 11
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 11
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Attorneys for Defendant Nils Ribi

SHARON R. HAMMER.

Case No. CV-11-928

**) AFFIDAVIT OF NILS RIBI IN
) OPPOSITION TO MOTION FOR
) TEMPORARY RESTRAINING ORDER**

Defendant.

NILS RIBI, being sworn upon oath, deposes and states as follows:

2. I have read and attempted to understand the Complaint, Motion for Temporary Restraining Order and Affidavits filed in support thereof.

3. Although the form of the pleadings in this case make it difficult if not impossible to understand with precision the matters set forth therein, your affiant can make some response.

THE ROARK LAW FIRM
400 North Main Street
Hailey, Idaho 83421
(208) 785-2627 Fax (208) 785-2628

1 4. At no time have I threatened by word or conduct to do any violent or physical act
2 against the Plaintiff in this matter.

3 5. At no time until after the end of City Council meeting of November 11, 2011 did
4 anyone, including the Mayor, City Attorney or my fellow City Council members advise me
5 that the Plaintiff had complained to them about my "threatening" behavior toward her.

6 6. I was completely unaware of any potentially improper or illegal activities the Plaintiff
7 had engaged in while employed by the City of Sun Valley until it was brought to my
8 attention by Michelle Frostenson, the City Treasurer that she had uncovered evidence that
9 indicated possible wrong doing by the Plaintiff.

10 7. I did not "call" a special meeting of the Sun Valley City Council on November 11,
11 2011. The meeting in question was called, pursuant to Idaho Code 50-706, by three council
12 members for the purpose of holding an executive session to hear evidence uncovered by City
13 Treasurer, Michelle Frostenson. A motion to go into executive session was made and passed
14 by all three members of the council in attendance.

15 8. During the course of the executive session matters were presented to the council that
16 caused all members serious concern about possible misuse of public funds and equipment by
17 the Plaintiff.

18 9. Following the City Council meeting and executive session of November 14, 2011 I
19 and the other council members learned that a Sun Valley City Police officer had listened into
20 the executive session and then reported to the Plaintiff who, notwithstanding her clear
21
22
23
24

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 2

THE ROARK LAW FIRM
409 North Main Street
Boise, Idaho 83725
(208) 789-2112 FAX (208) 789-2013

HAMMER 000814

1 knowledge of the impropriety of such intrusion, proceeded to question the officer about what
2 had gone on in that closed meeting from which she had been intentionally excluded.

3 10. By his letter of November 18, 2011, the Mayor, not the City Council or myself,
4 placed the Plaintiff on administrative leave. At and since the time of the Mayor's letter, the
5 Mayor and Council had reason to believe that the Plaintiff may have committed serious
6 misconduct, including possible criminal violations of statutes dealing with the misuse of
7 public funds and falsification of public records by the Plaintiff. Because the Plaintiff, in the
8 position of City Administrator, has unfettered access to the records of the City of Sun Valley,
9 including records which may be essential to a determination of whether or not improprieties,
10 misconduct and/or criminal action have been committed by the Plaintiff, it was and is
11 essential that she be placed on administrative leave and ordered not to be in Sun Valley City
12 hall until appropriate investigative measures have been completed.

13
14 11. The administrative leave is not a disciplinary action but is intended to protect the city,
15 its officer and employees while an investigation into the alleged improprieties, misconduct
16 and/or illegal activities is being conducted.

17 12. At no time have I ever demanded or even so much as suggested that the Plaintiff be
18 terminated or placed on administrative leave or disciplined in any manner for reporting
19 anything to anyone about me. Indeed, I did not until after the meeting of November 11, 2011
20 even become aware of any alleged report to the Mayor or City Attorney by the Plaintiff
21 regarding my alleged conduct or behavior.

22 13. The Plaintiff's attorney, who is also her husband, has made a series of threats to me,
23 the Mayor, the City Attorney and my wife that demonstrate that his action in filing this case
24

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 3

THE ROARK LAW FIRM
400 North Main Street
Tulley, Idaho 83253
(208) 786-2427 Fax (208) 786-2918

1 is designed to effect a political result and extract a large sum of money from the City. In
2 support of this averment I have attached hereto and incorporate by reference herein the
3 following, un-redacted exhibits:

- 4 a. Letter of November 12, 2011, James Donoval to Wayne Willich.
5
6 b. Letter of November 16, 2011, James Donoval to Wayne Willich with
7 attachments.
8
9 c. Undated letter of November 18, James Donoval to Patricia Brolin-Ribi (Wife
10 of Affiant).
11
12 d. Letter of November 20, 2011 to James Donoval from R. Keith Roark

13 14. I do not now and never have had any "vendetta" against the Plaintiff and my actions
14 in this matter have all been guided by and based upon my concerns about possible improper
15 and/or illegal conduct by the Plaintiff while acting in the course of her employment with the
16 City of Sun Valley. To my knowledge, the Plaintiff has not been deprived of any
17 compensation or benefit to which she would be otherwise entitled and no final action will be
18 taken until a full investigation, including opportunity for the Plaintiff to explain her activities,
19 has been completed.

20 15. Both the City Clerk and City Treasurer of the City of Sun Valley have also been
21 placed on administrative leave after informing the Mayor that they would be "afraid" to
22 return to work if Sharon Hammer is still functioning in the position of City Administrator.

23 16. The naming of Adam King, Sun Valley City Attorney, as a Defendant in this action is
24 an obvious attempt to place the City at a disadvantage in defending against the claims for

AFFIDAVIT OF NILS RIBI IN OPPOSITION
TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 4

THE ROARK LAW FIRM
400 North Main Street
Hailey, Idaho 83423
(208) 788-2431 Fax: (208) 788-3918

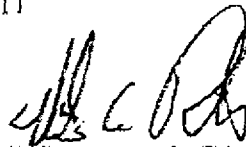
1 injunctive relief by requiring new counsel to be appointed who will not have sufficient time
 2 to prepare for any hearing on an application for temporary restraining order or preliminary
 3 injunction.

4 17. I am also concerned that the Mayor of Sun Valley, who was defeated in his re-
 5 election campaign and who has enjoyed a close personal relationship with the Plaintiff and
 6 her husband (counsel of record in this matter) is acting to further the interests of the Plaintiff
 7 rather than the interests of the City of Sun Valley by obstructing the efforts of City Attorney
 8 Adam King to enlist the representation of Brad Miller and the Hawley-Troxell law firm in
 9 defense of the city.

10 18. If this Court grants a temporary restraining order or preliminary injunction requiring
 11 the City to rescind the order placing the Plaintiff on administrative leave, the ability of the
 12 Mayor, the City Council and others who may have an interest in determining whether or not
 13 possible improper and/or illegal conduct by the Plaintiff has occurred will be compromised.
 14

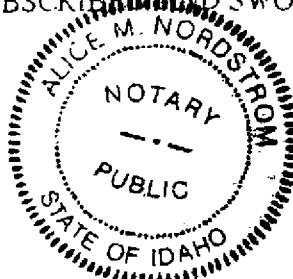
15 FURTHER YOUR AFFIANT SAYETH NOT.


16 Dated this 23rd day of November, 2011

17 

18 Nils Ribi

19
 20 SUBSCRIBED AND SWORN to before me this 23 day of November, 2011.




 Notary Public in and for the State of Idaho,
 residing at Hailey, therein.
 My Commission expires 2/26/15.

AFFIDAVIT OF NILS RIBI IN OPPOSITION
 TO MOTION FOR TEMPORARY
 RESTRAINING ORDER - 5

THE ROARK LAW FIRM
 406 North Main Street
 Hailey, Idaho 83426
 (208) 768-2427 Fax (208) 768-2428

EXHIBIT 12
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 12
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

SHARON R. HAMMER

Sun Valley City Administrator

4325 Fairway Nine Condos

PO Box 1499

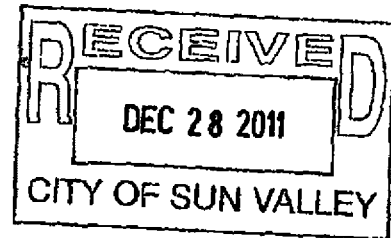
Sun Valley, ID 83353

(312) 965-0245

sharonrhammer@aol.com

December 28, 2011

Sun Valley City Clerk Kelly Ek
City Of Sun Valley
PO Box 416
Sun Valley, ID 83353



Re: Sharon R. Hammer v. Kirtlan Naylor, Patti Ball, Mayor Elect Briscoe:

Dear Ms. Ek:

On December 15, 2011, the attached letter was served upon you indicating my intent to file various claims against the City Of Sun Valley, Council Member Nils Ribi, Council Member Robert Youngman, City Attorney Adam King and Finance Manager/Treasurer Michelle Frostenson. Please be advised that this notice adds attorney Kirtlan Naylor, Special Investigator Patti Ball and potentially Mayor Elect DeWayne Briscoe to such notice.

On November 14, 2011, Sun Valley Mayor Wayne Willich ordered that an "independent" Special Investigation would commence, part of which was to investigate allegations made against me by Council Member Ribi and Finance Manager Frostenson. At some point, Mayor Willich appointed Patti Ball to perform the Special Investigation. On November 18, 2011, I was placed on "administrative leave" by Mayor Willich pending the Special Investigation. On November 21, 2011, I filed a cause of action in Blaine County, Idaho (No. CV-2011-928) against Council Member Ribi, the City Of Sun Valley and City Attorney Adam King pursuant to the Idaho Public Employee Protection Act (the "IPPEA Law Suit"). Subsequently, Council Member Youngman was added as a defendant in the IPPEA Law Suit. At some point, attorney Kirtlan Naylor was appointed by ICRMP to defend the City Of Sun Valley and Adam King in the IPPEA Law Suit, and eventually also filed Appearances on behalf of Council Member Ribi and Council Member Youngman in the IPPEA Law Suit.

Subsequent to Attorney Naylor appearing in the IPPEA Law Suit, Attorney Naylor, unilaterally and without any authority from the City Of Sun Valley or Mayor Willich, became involved in and started directing the Special Investigation. And although Special Investigator Ball was to have reported solely to Mayor Willich and perform an "independent" Special Investigation, Special Investigator Ball instead

unilaterally determined, without any authority from the City Of Sun Valley or Mayor Willich, that she would instead report to Attorney Naylor. Subsequent to Special Investigator Patti Ball determining that she would report to Attorney Naylor, Attorney Naylor and Special Investigator Ball began a scheme to seek any and all information about me specifically to find reasons to terminate me, rather than performing an "independent" Special Investigation, as had been Special Investigator Ball's defined role. This has recently been confirmed to me by Mayor Willich. Thereafter, Special Investigator Ball provided Attorney Naylor confidential information regarding myself and the Special Investigation that Attorney Naylor was not entitled to receive as counsel for the City Of Sun Valley, Council Member Ribí, Council Member Youngman and City Attorney King in the IPPEA Law Suit. On multiple occasions my attorney has requested that Attorney Naylor provide a written retainer agreement signed by Mayor Willich specifically authorizing Attorney Naylor to participate in any way in the Special Investigation, but such an agreement has not been produced. In addition, on information and belief, I assert that Special Investigator Ball's employment agreement with Mayor Willich or the City Of Sun Valley (if one exists) does not authorize Special Investigator Ball to either report to, or provide any information related to the Special Investigation to, Attorney Naylor.

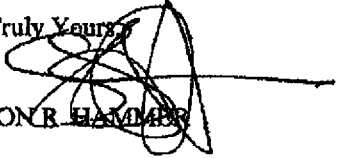
Pursuant to the Idaho Statutes Section 6-906, I am providing you with notice of my intention to file multiple tort and other claims against Attorney Naylor and Special Investigator Ball, including, intentional infliction of emotional distress, malicious prosecution, abuse of process, tortious interference with contract, and conspiracy. Please be advised that I would be willing to settle all matters for the same sum as is being sought in the IPPEA Law Suit, namely, \$1 million.

I consider all of the acts of Attorney Naylor exempt from immunity under the Idaho Tort Immunity Act (Idaho Statutes 6-901 et. seq.) as they were done outside his authority as defense counsel in the IPPEA Law Suit, and because they were done with malice towards me in purposefully seeking my termination. I also consider all of the acts of Special Investigator Ball exempt from immunity under the Idaho Tort Immunity Act (Idaho Statutes 6-901 et. seq.) as they were done outside her specific authority to perform an "independent" Special Investigation, because she was not authorized to report to or disclose any information related to the Special Investigation to Attorney Naylor, and because they were done with malice towards me in purposefully seeking my termination.

Finally, at this point, I have been placed back on active duty as the Sun Valley City Administrator, the Special Investigation has been completed and I have been absolved of any violation of Sun Valley policies and procedures or any other act that would warrant either disciplinary actions or termination. Thus far, Mayor Elect Briscoe has remained neutral on any of these matters. However, should any additional disciplinary acts be taken or should my contract with Sun Valley be terminated, I will seek to amend the IPPEA Law Suit to include Mayor Elect Briscoe, Attorney Naylor and Special Investigator Ball as defendants in that matter. Please also be on notice that I will also seek tort damages against Mayor Elect Briscoe for intentional infliction of emotional distress, malicious prosecution, abuse of process, tortious interference with contract, and conspiracy. Finally, I will file a Federal Section 1983 case against the City Of Sun Valley, Mayor Elect Briscoe, Council Member Ribí, Council Member Youngman, City Attorney King, Finance Manager Prostenson, Attorney Naylor and Special Investigator Ball, asserting violations of my constitutional rights to seek redress in the courts, for violation of my due process rights in terminating my contract with Sun Valley for improper reasons, and for violation of my

equal protection rights in terminating my contract but taking no disciplinary action against City Attorney King and Finance Manager Prostenson for their multiple violations of Sun Valley policies and procedures.

Very Truly Yours,


SHARON R. HAMMER
SH:sh

cc: J. Donoval

EXHIBIT 13
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 13
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

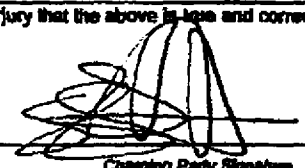
CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Statement and other information before completing this form.</small>		Charge Presented To: _____ Agency(ies) Charge No(s): _____ <input type="checkbox"/> FEPA <input type="checkbox"/> EEOC	
Idaho Human Rights Commission and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Ms. SHARON R. HAMMER		Home Phone (incl. Area Code) (312) 965-0245	
Date of Birth 6/3/61			
Street Address 4325 Fairway Nine PO Box 1499		City, State and ZIP Code Sun Valley, ID 83353 Sun Valley, ID 83353	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name The City of Sun Valley		No. Employees, Members 30	
Street Address Sun Valley City Hall		Phone No. (include Area Code) (208) 672-4438	
City, State and ZIP Code Sun Valley, ID 83353			
Name Nils Ribi (City Council Member)		No. Employees, Members _____	
Street Address _____		Phone No. (include Area Code) _____	
City, State and ZIP Code _____			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY		DATE(S) DISCRIMINATION TOOK PLACE Earliest _____ Latest _____ <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). <div style="display: flex; justify-content: space-between; align-items: flex-start; padding: 10px;"> <div style="width: 20%;"> <p>***SEE ATTACHED***</p> </div> <div style="width: 80%;"> <p>The Complainant has filed a Complaint against the City of Sun Valley & Nils Ribi pursuant to the Idaho Protection of Public Employees Act (Idaho statutes 6-2101 et seq.). The Complainant seeks to bring a hostile work environment claim but first must file a complaint with the IHRC pursuant to Idaho Code 67-5908.</p> </div> </div>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		IDAHO HUMAN RIGHTS COMMISSION 317 W. MAIN, 2 ND FLOOR BOISE, IDAHO 83735-0660	
Date 12/15/11		Charging Party Signature 	

TABLE OF CONTENTS

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment CONT.	11/18/2014	1134
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INDEX

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment CONT.	11/18/2014	1134
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Page 2

Complainant: SHARON D. HAMMER Respondent: the City Of Sun Valley & Nils Ribbi

THE PARTICULARS ARE:

I. COMPLAINANT'S STATEMENT OF HARM:

City Council Member Nils Ribbi has sought the termination of the complainant in retribution for her complaints against him.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:

Unknown

III. COMPLAINANT'S STATEMENT OF DISCRIMINATION:

I believe I was discriminated against based on gender & sex. In support of this statement, I offer the following facts:

- A. *Complainant asserts that over the course of the last 2 years, Sun Valley City Council Member Nils Ribbi has harassed and otherwise violated City Of Sun Valley Harassment & disciplinary policies and has caused a severely hostile work environment to the complainant.*
- Respondent employs at least 30 employees.

I believe the practices of the above-named Respondent are in violation of:

- ☒ Title 67, Chapter 59 of the Idaho Code
☒ Title VII of the Civil Rights Act
☐ The Americans with Disabilities Act (ADA)
☐ The Age Discrimination in Employment Act (ADEA)
☐ Title 44, Chapter 17 of the Idaho Code

EXHIBIT 14
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT


EXHIBIT 14
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Wayne Willich

From: Wayne Willich
Sent: Friday, December 23, 2011 3:46 PM
To: 'sharonrhammer@aol.com'
Subject: Return from leave

Sharon,
I am requesting you return from leave on Tuesday December 27th at your normal 8:00 AM time. You will assume your normal duties as City Administrator, paid-on-call firefighter and EMT roles. I must remind you there is a certain level of tension among the City staff and I expect you to make every effort to achieve a degree of harmony among them. Also, if you feel any animosity, intimidation or other untoward behavior directed at you, you must come to me with the information to give me a chance to resolve it. If you are not satisfied you are free to contact Kirt Naylor at his offices in Boise. Tel 208-383-9511

Regards,


Wayne Willich
Mayor, City of Sun Valley
(208) 622-4438 FAX (208) 622-3401
wwillich@svidaho.org

Received  12/23/11

EXHIBIT 15
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 15
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

From: Wayne Willich
Sent: Thursday, December 29, 2011 1:40 PM
To: Sharon Hammer
Subject: RE: Investigation

Sharon,
Here is the way I understand it now. A draft report was prepared by Patti Ball. It was reviewed by Mayor Elect Briscoe, ICRMP attorneys, Adam King and me. After reviewing the report and conducting a bit of an investigation of my own, I have concluded there was insufficient material in the report to warrant your staying on leave. In fact, through my own work, I was able to find several inconsistencies in the report that led me to bring the entire report into question. As far as I am concerned the matter is closed.

The Mayor

From: Sharon Hammer
Sent: Thursday, December 29, 2011 9:53 AM
To: Wayne Willich
Subject: Investigation

Mayor: Can you please advise me on the status of the investigation of me?

Sharon R. Hammer
City Administrator
Sun Valley City Hall
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353
208.622.4438

EXHIBIT 16
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 16
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Mayor Dewayne Briscoe
DATE: January 4, 2012
RE: **NOTICE OF PAID ADMINISTRATIVE LEAVE
PENDING INVESTIGATION**

YOU ARE HEREBY NOTIFIED THAT subsequent to placing you on paid leave, we have received information indicating that you may have acted, omitted acts, or otherwise performed in ways which are contrary to the expectations or the standards of conduct for the City of Sun Valley employees.

Because the matter under investigation potentially affects other employees, we cannot at this time provide additional details about the behavior that is of concern at this time.

THEREFORE, UNTIL THE INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY COMPLETED, YOU ARE HEREBY ON PAID LEAVE FROM PERFORMANCE OF YOUR CURRENT DUTIES WITH PAY.

Pending the outcome of our inquiry, you are directed not to perform any of the duties of your employment. Further, you should not make any representations or statements as a representative of the City of Sun Valley. You are further directed not to make any contact (directly, indirectly, personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. **This is a confidential personnel matter at this point, and you should respect that confidentiality until our inquiry is complete and you have been able to respond to our initial determinations. This paid leave is not a disciplinary action.**

You are also directed, as a condition of your continued receipt of your pay during this period of paid leave, to respond honestly to any inquiries from me, or any other individual designated by me, concerning any aspect of this investigation and any matters of business which are within your knowledge and within the normal course of your employment.

YOU ARE FURTHER DIRECTED THAT effective immediately, and during the period of your paid leave, you are not authorized to be present in any of the private offices of any City facility which are not accessible to any other member of the general public, without express written permission from me or the official in control of such facility. Finally, you are directed not to access or utilize any City computer, computer system, network resource or application (however characterized) or remove any documents or other City property (excluding

only your personal effects unconnected with City operations) from any City facility. Further, if you have any records, documents, or other papers (in any format, including electronic or paper) in your possession, that are City records or public records, which you have not received in your possession pursuant to a duly authorized public records request, you are to return all such to the City immediately. You are to also immediately return to the City all keys, credit cards, equipment, including fire department equipment, computers, laptops, iPads, and any and all things owned by the City in your control or possession. Retention of any such documents and things is not acceptable.

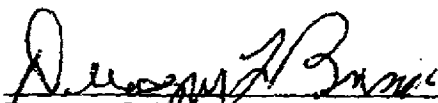
You are hereby notified that any violation of the directives set forth in this Notice may result in separate additional consequences, including the forfeiture of continued pay or termination.

In the event the investigation indicates personnel action is warranted for your conduct or for cause, you will be given an opportunity to present any response to the information received as a result of the on-going investigation before a final decision is made regarding the action to be taken.

If you do not desire to accept this continued paid leave pending the outcome of the on-going investigation, but prefer that your employment records with the City of Sun show that you terminated your employment by resignation, please submit your written resignation to me and your resignation will be documented and your final paycheck will be prepared and delivered to you.

Please be advised that since this matter involves potential personnel action, you are requested to respect its confidential nature until all steps in the process have been completed.

DATED this 4th day of January, 2012.


Dewayne Briscoe
Mayor

Affirmation of Service

Service of the foregoing Notice was delivered by hand delivery to Sharon Hammer on this
4th day of January, 2012.

Signature

EXHIBIT 17
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 17
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PERSONAL AND CONFIDENTIAL

TO: Sharon Hammer, City Administrator
FROM: Dewayne Briscoe, Mayor
DATE: January 4, 2012
RE: **NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE
IN INTERVIEW PROCESS AND ADVICE OF RIGHTS**

YOU ARE HEREBY ADVISED that you may be questioned as a part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and to have an attorney of your choice present during questioning. **Accordingly, you are hereby ordered pursuant to Garrity v New Jersey, 385 U.S. 493 (1967), to submit to this interview and are specifically advised that nothing you say in response to questions posed to you during this interview will be used against you in any subsequent criminal prosecution.**

YOU ARE FURTHER ADVISED that if you refuse to answer questions relating to the performance of your official duties, you will be subject to administrative charges which may result in your dismissal from employment. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent administrative charges and violations of the City of Sun Valley's policies and procedures as well as the City of Sun Valley Personnel Policy.

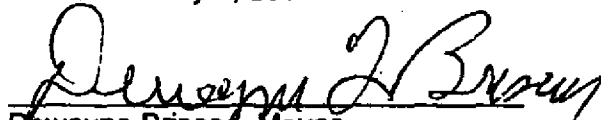
You are hereby notified that you are hereby placed on a paid leave status, and that, as a condition of continued receipt of pay during this paid leave, you are directed to assist this agency concerning matters you were addressing as an active employee and to provide the City of Sun Valley with a telephone number and address where you will be available at all times during said paid leave. You are further directed to fully cooperate with and honestly and fully respond to any inquiries you receive from the Mayor or any other person involved in this administrative investigation. Further, if you provide false, misleading or incomplete information in answering any questions during this procedure, you may subject yourself to administrative action, up to and including your dismissal from employment with the City of Sun Valley.

Once you have had an opportunity to review this Notice, and in the event you do not intend to comply with this order to participate in this aspect of the administrative investigation, you are directed to notify me immediately. As previously noted herein, in the event you refuse to participate in or to answer questions relating to the performance of your official duties, you may be subject to administrative action, up to and including dismissal from your employment with this agency. However, that is a decision you must make.

YOU ARE FURTHER DIRECTED NOT TO MAKE CONTACT WITH ANY PERSON WHO MAY HAVE FILED A COMPLAINT AGAINST YOU OR WHO HAS BEEN A WITNESS TO ANY SUCH EVENT, WHETHER IN PERSON, THROUGH A THIRD PARTY, BY TELEPHONE, OR IN ANY OTHER MANNER NOT SPECIFICALLY STATED HEREIN.

If, after considering this Notice, you prefer that your employment records with the City show that you terminated your employment by resignation, please submit your written resignation to me, so that your records may be properly documented and your final paycheck will be prepared and delivered to you.

Dated January 4, 2012.


Dewayne Briscoe, Mayor

Affirmation of Service

Service of the foregoing Notice was delivered via hand-delivery to Sharon Hammer on this 4th day of January, 2012.

Signature

EXHIBIT 18
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 18
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Friday, January 6, 2012

City administrator and fire chief back on leave

Sun Valley City Administrator Sharon Hammer was placed back on paid administrative leave Thursday, Mayor Dewayne Briscoe said. Former-mayor Wayne Willich placed Hammer on leave Nov. 18. She had returned to active duty status Dec. 27.

Fire Chief Jeff Carnes was back on the job Tuesday, only to be placed back on leave Thursday. Carnes told the Idaho Mountain Express that he had been put on paid administrative leave as of Dec. 20. Then-mayor Wayne Willich would not confirm that. Willich did, however, say before swearing in Mayor-elect Briscoe that Carnes was on

duty Tuesday, Jan. 3. Briscoe confirmed Thursday that Carnes was placed on leave as of Jan. 5.

When asked why Hammer and Carnes were placed on leave, Briscoe referred the Express to attorney Kirtlan Naylor, who was appointed by Sun Valley's insurance carrier to represent the city in a lawsuit brought by Hammer against the city. Naylor told the Express that he could not comment on why the staffers were on leave, other than to say the leaves were paid and were not related to any disciplinary action.

EXHIBIT 19
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 19
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

SERVICE COPY

Kirtlan G. Naylor [ISB No. 3569]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: kirt@naylorhales.com

Attorneys for Defendants City of Sun Valley,
Nils Ribi, Adam King and Robert Youngman

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

NILS RIBI, an individual; THE CITY OF SUN
VALLEY, an Idaho municipal corporation;
ADAM KING, an individual; and ROBERT
YOUNGMAN, an individual,

Defendants.

Case No. CV-2011-928

**AFFIDAVIT OF
DEWAYNE BRISCOE**

STATE OF IDAHO)
)ss.
County of Blaine)

I, DEWAYNE BRISCOE, having been duly sworn do hereby depose and say as follows:

1. I am the duly elected Mayor for the City of Sun Valley, Idaho since January 3, 2012,
and served as the President of the City Council before that time for all times relevant to these
proceedings.

AFFIDAVIT OF DEWAYNE BRISCOE- 1.

2. I have personal knowledge of the facts stated herein and could so testify if called as a witness.

3. The Sun Valley City Council authorized me, as Mayor-elect, and then Mayor Wayne Willich to jointly supervise the investigation into personnel matters relating to, among others, Sharon Hammer, Sun Valley City Administer ("Hammer"). In this capacity, former Mayor Willich and I interviewed and selected Patti Ball as the investigator.

4. No final determination has been made regarding any report produced by Patti Ball. Former Mayor Willich did not have authority to unilaterally "close" the investigation. He has at no time informed me of any such decision, and as far as I know, he never advised me that no additional action should be taken into matters investigated.

5. In fact, I am aware that he authorized, in writing, counsel for the City to communicate certain findings from the report to an appropriate independent party for review regarding possible criminal investigation/charges. This written authorization was never rescinded, as far as I know.

6. I also was told by Mayor Willich that he did not read all of the Ball report, nor did he at anytime before leaving office review any of the exhibits attached to the report.

7. Without consulting with me beforehand, Mayor Willich returned Hammer to work from paid leave on about December 27, 2011.

8. January 4, 2012, was the first day I worked in the Sun Valley City Hall as mayor. Ms. Hammer was working that day. I spent about one and a half hours allowing Ms. Hammer to express whatever she wanted to tell me about her abilities, the allegations, and her position/response to the alleged misconduct, as she understood them. Throughout the day, she would come to me and continue her presentation to me on this matter.

AFFIDAVIT OF DEWAYNE BRISCOE- 2.

9. On Thursday, January 6, 2012, I caused to have Ms. Hammer served with a NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION and NOTICE OF ADMINISTRATIVE INVESTIGATION; ORDER TO PARTICIPATE IN INTERVIEW PROCESS AND ADVICE OF RIGHTS (*Garrity*).

10. I was aware of, and based, in part, my decision to place Ms. Hammer on paid leave on the following:

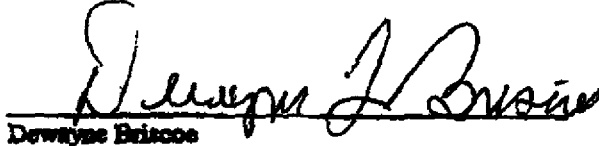
- The Ball report.
- Information had come to me that while Ms. Hammer had been returned to work the prior week that there had been reports of retaliatory behavior toward persons who had provided information to Investigator Ball, to which she had been a party or instigator.
- Under her supervision as City Administrator, the email accounts for two of the investigation witnesses had been placed on the server, available to any employee, which may have jeopardized confidential or attorney-client privileged material.
- That while she had returned to work, Ms. Hammer has accessed confidential attorney-client privileged materials between city officials and the city attorney, and divulged those to her husband/attorney James Donoval.
- That pursuant to the notices served as referenced herein, Ms. Hammer was specifically directed to return all city records and documents, as well as laptops, and equipment in her possession or control, and she has not returned anything to date, even though it is believed that she still has possession of items to return. This would include, at the least, documents and emails, which she obtained only in her position as City Administrator since December 27, and which I know she now has because her attorney referenced these in a letter to counsel for the City dated January 3, 2012. In that letter, Mr. Donoval admitted, "Finally, since Ms. Hammer has been placed on active duty, she has obtained email correspondences" that included at the least privileged communications between the City Treasurer and Clerk with the City Attorney.
- Her presence at work created hostility reported by at least two critical city employees.
- After returning to work, she allowed the City Clerk to be locked out of her office for a period of time.

AFFIDAVIT OF DEWAYNE BRISCOE- 3.

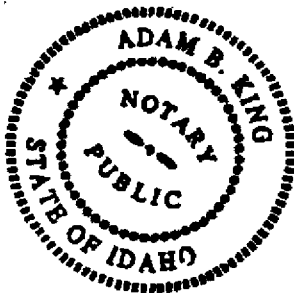
- After returning to work, she allowed emails of persons who presented information to the investigator to have their emails deleted.
- After returning to work, she reportedly allowed her attorney to be in the back offices of City Hall, with possible access to documents that he could not otherwise obtain except through discovery process or public records requests.
- After returning to work, she spent at least some time, drafting and delivering communications related to her lawsuits against the city and its officials.

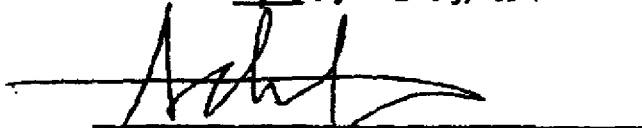
11. Based on my personal observations and knowledge of the workings of the City Hall, I made the decision that it was in the best interests of the City for Ms. Hammer to be on paid leave pending the outcome of the matters under consideration and investigation.

Dated this 9 day of January, 2012.


Dewayne Briscoe

SUBSCRIBED AND SWORN TO before me this 9th day of January, 2012.




Notary Public for Idaho
Residing at:
Commission Expires:

AFFIDAVIT OF DEWAYNE BRISCOE- 4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2012, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
P.O. Box 1499
Sun Valley, ID 83353
Attorney for Plaintiff

☒ U.S. Mail
☐ Hand Delivered
☒ Email: jdonoval@aol.com

R. Keith Roark
The Roark Law Firm
409 N. Main St.
Hailey, ID 83333
Cò-Attorneys for Defendant
Nils Ribi

☐ U.S. Mail
☒ Hand Delivered
☐ Email: keith@roarklaw.com
☐ Fax Transmission: (208) 788-3918


Kirtlan G. Naylor

M:\CRM\Hammer v. Sun Valley\Pleadings\8406_12 Aff of DB.wpd

AFFIDAVIT OF DEWAYNE BRISCOE- 5.

EXHIBIT 20
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 20
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT



PRESS RELEASE JANUARY 16, 2012

CITY OF SUN VALLEY

The day after a contested court hearing, including motions to stop Plaintiff's harassing discovery requests and sanction Attorney James Donohai, Sharon Hammer voluntarily dismissed her lawsuit against the City of Sun Valley, Councilman Nils Ribi, City Attorney Adam King and Councilman Robert Youngman. Ms. Hammer's two other lawsuits against the City of Sun Valley are still active.

City of Sun Valley officials are glad to see that this unfounded lawsuit has been dismissed. While their counsel, Kirtlan Naylor, communicated all settlement offers by Ms. Hammer to the City, this resolution of a voluntary dismissal by Hammer is the appropriate action.

At no time did the City's insurer, ICRMP, threaten that legal counsel or insurance coverage for the City was in jeopardy, contrary to allegations by Hammer.

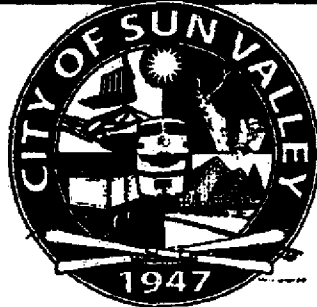
Mr. Naylor stated in court at the hearing, held January 11, that the City's investigative report, which has been the subject of much discussion in the news and court filings, has been turned over to the Blaine County Prosecuting Attorney for an independent review of possible criminal conduct. For that reason, it cannot be released for public consideration at this time.

The City of Sun Valley appreciates the patience of its citizens as appropriate steps are taken in this matter. Mayor Briscoe is committed to ensuring a strong and effective administration to conduct the business of the City. The dismissal of this lawsuit will allow the administration to now focus on the governing of the City and providing appropriate services to the citizens of Sun Valley.

EXHIBIT 21
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 21
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

WED JAN 25, 201.



City of Sun Valley City Administrator Sharon Hammer Terminated

Statement to City Council January 19 by Mayor Briscoe

"I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration." The City Council, by unanimous vote (4-0) confirmed the action recommended, and directed Mayor Briscoe to take such action as authorized by the employment agreement.

**P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438
FAX 208-622-3401 www.sunvalley.govoffice.com**



City of Sun Valley City Administrator Sharon Hammer Terminated

Statement to City Council January 19 by Mayor Briscoe

"I have made the decision to take action as provided by the City Administrator Employment Agreement to terminate the City Administrator under the provision in Section 3, Paragraph A, which provides for immediate termination and a lump sum severance pay equal to six months base salary. The Agreement further provides that according to this condition, the City Administrator waives her right to bring a claim of any kind for damages against the City of Sun Valley arising from such a termination. With this action, I will now be able to turn my attention to the management of the City's business with a City Administrator for my administration." The City Council, by unanimous vote (4-0) confirmed the action recommended, and directed Mayor Briscoe to take such action as authorized by the employment agreement.

**P.O. Box 416 • SUN VALLEY, ID 83353 • 208-622-4438
FAX 208-622-3401 www.sunvalley.govoffice.com**

EXHIBIT 22
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 22
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

From: Kelly Ek [kek@svidaho.org]
Sent: Wednesday, January 18, 2012 8:40 AM
To: jerry@mtexpress.com
Subject: Please place quarter page ad.....Call me ASAP
Attachments: Sun Valley Press Release.pdf

Importance: High

Hi Jerry,
We would like to place a quarter page Ad in the Friday edition.
Please call me regarding placement, etc.
Also, I will need to see and approve a proof.
We may want to do it in color, so please quote me prices in color, and send me proofs in color as well
We want this Ad to stand out.
Thank you.

Kelly Ek, CMC
City Clerk
City of Sun Valley
208.622.4438 ext. 19

EXHIBIT 23
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 23
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

June 2, 2014

Subject: Vacation Accrual Data

To: Eric B. Swartz

Cc: Kirtlan G. Naylor

Gentlemen,

As requested during my deposition on May 28th, I have compiled some data on the subject of improper vacation accrual. To reiterate, Treasurer Michelle Frostenson on October 5th 2011 told me she feared for her job because there was improper vacation accrual in the amount of over \$130,000 and would be an issue in the upcoming audit coming up in December. She repeated this in the November 11th City Council executive session where as I recall was the first issue she brought up.

Attached on page 1 is a copy of the first look that part time bookkeeper Tammi Hall prepared for me after staff members were placed on leave. It was done on 12/13/2011 and reflects the accrual as of 12/05/2011 which was the last pay period. Since the actual accrual dollar amount was just about 1/10th the amount alleged by Ms Frostenson, I assume she was either inept or had some other idea in mind.

Further, on page 2 of the attachment I asked Tammi to do another report that went back to the last pay period in the fiscal year to see what the over accrual would show as this was the data the auditors would look at. The data showed (after a correction to Chief Daggett's entry) that the over accrual was about \$31,000 which was still about one fourth of what Ms Frostenson alleged. Since the Eide Bailly auditor's report was delayed one year due to investigations going on in 2012, I did not see the report until

January 2013. Attached pages 3 and 4 are copies of a letter sent by me to the Mayor and City Council on January 15th, 2013. Although the numbers may not be perfectly accurate, the gist of the story is. Attached pages 5 and 6 are copies of the Eide Bailly auditor's letter that supports the much smaller dollar amount of vacation accrual.

Many years ago the Boeing Company where I was employed was faced with a similar situation. The company informed the employees they had six months to use the vacation time or lose it. To this end I sent a memo to staff informing them they had to use the vacation within the next six months or lose it. Since the new administration was sworn in shortly thereafter, I don't know what then transpired.

If there are any questions concerning what I have laid out here I am available to answer them. Also since this is supplementary information to the deposition I gave, I am assuming it is given under oath.

Respectfully,
Wayne Willich

(signed 6/02/2014)

City of Sun Valley Mayor

January 7th, 2008 to January 4th, 2012

Name	Overage Vacation Hours	Wage Rate	Liability
Eric Adams	55.06	46.36	\$2,552.58
Ray Franco	6.28	40.92	\$256.98
Sharon Hammer	78.4	58.09	\$4,554.26
Mark Hofman	121.28	50.45	\$6,118.58
Cindy Moore	34.61	22.35	\$773.53
Kim Orchard	24.48	31.77	\$777.73
Reid Black	1.54	21.53	\$33.16

\$15,066.81

12/13

① 6/2/2014 (410)

9/25/2011

Name	Overage Vacation Hours	Wage Rate	Liability
Over 100 Hours			
Eric Adams	76.56	46.36	\$3,549.32
Conar Cunningham	1.42	23.23	\$32.99
Ray Franco	87.18	40.92	\$3,567.41
Sharon Hammer	79.6	58.09	\$4,623.96
Mark Hofman	171.1	50.45	\$8,632.00
Cindy Moore	5.81	22.35	\$129.85
Kim Orchard	86.18	31.77	\$2,737.94
William Reis	46	21.42	\$985.32
Over 200 Hours			
Jeff Carnes	95.2	51.52	\$4,904.70
Mike Crawford	37.79	51.52	\$1,946.94
Cam Daggett	25	54.94	\$1,373.50
			\$32,483.93
			\$ 31,110.93

② 6/2/2014 (102)

January 15th, 2013

To: Mayor and Council City of Sun Valley
Subject: Eide Bailly Audit Report FY 2011

Dear Mayor and Council,

I have reviewed the subject audit report and have had a Boise based CPA firm review it. In general I can accept the report as written with a few comments.

On page two the auditor describes some back pay due to firefighters. Before leaving office, I was able to identify one firefighter that kept a personal log of time spent which I describe as "hanging around the Elkhorn station". The firefighter I identified was NOT Nick Carnes. Without the names associated with the \$30,000 in back pay, I can't comment further. Additionally, the auditor identified \$23,000 in vacation over-accrual. Tammi Hall, the part time bookkeeper, and I identified \$17,000 in overaccrual. The \$6,000 difference is not material, however the \$133,000 that was originally alleged by the Treasurer was purposely intended to mislead and misrepresent to the Council an improper liability that did not exist.

On page two the auditor states "We are pleased to report that no such disagreements arose during the course of our audit" This is in part due to our making the auditor aware of the misrepresentation.

On page four the auditor shows a balance of unrestricted assets of \$3,062,620 which is a very robust balance for a yearly budget of about \$5 million.

On page five due to a very conservative approach to budgeting by the respective Councils, the budgets for FY 2010 and FY 2011 were under run by a combined \$772,787. The auditor reinforces the idea with a statement at the top of page 9 "is in general a result of an overall careful spending of dollars which resulted in nearly all departments under-spending budgeted dollars".

In summary, at the end of FY 2011 on September 30, 2011, the fiscal house of the City of Sun Valley was in order. This should have been reported to the Mayor and City Council on swearing in on January 4th 2012 but was delayed and now

③ 6/2/2014 (WR)

my administration can fulfill our State of Idaho Statutory requirements. Please consider this letter to be the official communication to the present administration of the City and should be put into the public record. No material change was made to the financials between September 30th 2011 and January 4th, 2012.

Respectfully,



Wayne Willich

Mayor City of Sun Valley

January 7th, 2008 to January 4th, 2012

EideBailly

CPA & BUSINESS ADVISORS

December 03, 2012

To the City Council
City of Sun Valley, Idaho
Sun Valley, Idaho

We have audited the financial statements of the governmental activities and each major fund of City of Sun Valley, Idaho (the City) for the year ended September 30, 2011. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated October 12, 2011. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City are described in Note 1 to the financial statements. During the year, Governmental Accounting Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions* was implemented. The objective of this statement is to enhance the usefulness of fund balance information by providing clearer fund balance classification that can be more consistently applied and by clarifying the existing governmental fund type definitions. No other accounting policies were adopted and the application of existing policies was not changed during 2011. We noted no transactions entered into by the City during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

The completion of the audit was delayed due to certain allegations and subsequent investigations in addition to significant turnover of several key employees.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Below is a summary of the uncorrected misstatements of the financial statements. Management has determined that their effects are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. The following misstatements were not corrected by management and were not reflected in the financial statements:

- a) General Fund
 - i) Record backpay to employees of the fire department for total of \$30,000.
- b) Government-Wide
 - i) Record backpay to employees of the fire department for total of \$30,000.
 - ii) Reduce vacation payable for an overaccrual of \$23,000.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated December 03, 2012.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the City's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Information in Documents Containing Audited Financial Statements

With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

This information is intended solely for the use of City Council and management of City of Sun Valley, Idaho and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Eide Bailly LLP
Boise, Idaho

② 6/2/2014 (W2) 2

EXHIBIT 24
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 24
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

1170

Page 2

Page 4

THE DEPOSITION OF WAYNE WILlich was taken on behalf of the Plaintiffs at the offices of Jones & Swartz, PLLC, Boise, Idaho, commencing at 9:01 a.m. on May 28, 2014, before Andrea L. Check, Registered Professional Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For the Plaintiffs:

Jones & Swartz, PLLC

BY MR. ERIC B. SWARTZ

1673 West Shoreline Drive, Suite 200

P.O. Box 7808

Boise, Idaho 83707-7808

For the Defendant:

Naylor & Hales, P.C.

BY MR. KIRTLAN G. NAYLOR

950 West Bannock Street, Suite 610

Boise, Idaho 83702-6103

ALSO PRESENT: Mayor Dewayne Briscoe
Nils Ribl

PROCEEDINGS

WAYNE WILlich,

first duly sworn to tell the truth relating to said cause, testified as follows:

EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Please state your legal name.

A. It's Wayne Willich, W-i-l-l-i-c-h, with no middle initial.

Q. Mr. Willich, you're here pursuant to a subpoena; correct?

A. That one?

Q. That would be the cover letter, and there's the subpoena. Despite being subpoenaed to be here, thank you for joining us. We do appreciate your time today.

Do you understand that you have just been administered and have accepted the oath to tell the truth?

A. Uh-huh.

Q. And is that a "yes"?

A. That's a yes.

Q. Do you understand that the testimony that you

Page 3

Page 5

I N D E X

TESTIMONY OF WAYNE WILlich

Examination by Mr. Swartz

Examination by Mr. Naylor

PAGE

4, 180

87

EXHIBITS

(No exhibits marked)

MARKED QUESTION

Page 51, Line 9

will give here today carries the same force and effect as testimony given in a court of law?

A. Yes.

Q. Andrea, our court reporter, is making a transcript of everything that is being said here today. To help her make the most accurate transcript possible, there's a couple of helpful hints for you and I.

The first helpful hint is to answer audibly "yes," "no," or a spoken narrative, as the question may require. Try to avoid head shakes or "huh-uhs" or "uh-huhs." Okay?

A. Okay.

Q. Next, if we can be careful and not talk over one another. Allow me to finish my question before you begin your answer, and I will certainly endeavor to allow you to finish your answer before I ask my next question. Okay?

A. Okay.

Q. If I ask a question that you do not understand, please ask me to rephrase it. I want to make sure that any question you are answering is a question that you understand. Okay?

A. Okay.

Q. And if you do answer a question, it will be understood that you understood the question. Okay?

Page 6

1 A. Okay.
2 Q. If I ask a question that you do not know the
3 answer to, I do encourage you to state that you don't
4 know rather than to guess. Okay?
5 A. Okay.
6 Q. This testimony that you're giving today is
7 based upon knowledge that you have personally. All
8 right?
9 A. Okay.
10 Q. If during your deposition today you realize
11 that something you said was -- something needs to be
12 corrected or amended, please stop me. Let's get that
13 done on the transcript today. Okay?
14 A. Okay.
15 Q. Any questions?
16 A. No.
17 Q. Did you do anything to prepare for your
18 deposition today?
19 A. Do I get to ask you questions, like what do
20 you mean "prepare"?
21 Q. Yeah, that's a great question. That's asking
22 me to clarify the question.
23 A. Yeah.
24 Q. So, for example, did you look at any documents
25 specifically in anticipation of your deposition today?

Page 7

1 A. Look at any documents? I'm still trying to
2 get you -- trying to understand what you're talking
3 about. Taking a look at some papers a few weeks ago
4 trying to review like time lines, is that what you mean?
5 Q. Yeah, exactly.
6 A. That's what I did.
7 Q. Okay. And these are papers that -- were they
8 notes? Are they affidavits that you had signed? Can
9 you recall?
10 A. I know I went through my calendars. I have,
11 you know, the old-fashioned little pocket-sized
12 calendars. And I have kept them over the years. And I
13 just flipped through there to see if I could, oh, just
14 refresh my memory on dates and times.
15 Q. Anything else that you may have reviewed?
16 A. No.
17 Q. Did you have a chance to speak with anybody
18 about your deposition?
19 A. Speak with anybody? You mean like Jim Donoval
20 calling me and saying, "Are you going to be at the
21 9:00 o'clock meeting?"
22 And I said, "Yes, I'm going to be at the
23 9:00 o'clock meeting."
24 Q. Okay. Anyone else?
25 A. No. You mean to discuss what might be

Page 8

1 discussed at this meeting? No.
2 Q. I think you've got it. I think you've got it.
3 A. Let me clarify. I haven't had discussions,
4 including with my wife, about what I might say or not
5 say at this meeting.
6 Q. Okay. Perfect. Thank you.
7 During what period of time were you the mayor
8 for the City of Sun Valley?
9 A. I was sworn in January something -- the first
10 week of January of '08, and Mayor Briscoe was sworn in
11 as mayor January of '12. And it was the 3rd or 4th of
12 January.
13 Q. And while you were mayor, did you come to have
14 an understanding of what your position duties were for
15 the City of Sun Valley?
16 A. I did.
17 Q. And what was your understanding?
18 A. Well, my understanding is that it's along the
19 same lines as the federal government model, you know,
20 the president, chief administrative officer, CEO,
21 whatever name you'd like to use to describe the mayor's
22 assignment.
23 And I thought the relationship with the city
24 council was a little bit like Congress. City council
25 controlled the purse strings, and as far as the running

Page 9

1 of the city, I was to run the city within the
2 constraints of the budget that was passed by the
3 council. That's broadly what I thought my assignment
4 was.
5 Q. During your term, who had the task of dealing
6 with personnel issues?
7 A. I did. If you look at the organization chart,
8 all of the staff people reported up through to my
9 office.
10 Q. During your term, who had the authority to
11 direct the duties of the city administrator?
12 A. I did.
13 Q. Did the city council have the authority to
14 overrule your direction to the city administrator?
15 A. Not in my understanding, no.
16 Q. During your term, who was the city
17 administrator?
18 A. There were -- this is going to take just a
19 little bit of discussion, but it leads up to who the
20 city administrator was during the bulk of my term.
21 Q. Okay.
22 A. But when I first came on board, there was an
23 interim city administrator, and his name was Bob Van
24 Ort. And Mayor Thorson was still, you know, the mayor.
25 I had been elected, but Mayor Thorson was still, you

Page 10

1 know, the mayor. I had not been sworn in.
2 And somewhere along the line, Bob Van Ort got
3 into some difficulty with some staff people, and he was
4 either fired or asked to resign. And that -- and I have
5 no knowledge about how that all came about, but he was
6 gone.

7 And with Mayor Thorson's help, we interviewed
8 a couple of potential interim city administrators, and
9 then we hired -- whose name just escaped me -- Jerry
10 Osterman, and he had some 35 years in city
11 administration and so forth. Terrific guy. Helped me
12 tremendously.

13 Then we went on a search for the, I'll say,
14 permanent city administrator, and we interviewed, I'm
15 going to say, five or six candidates, meetings with
16 council members, and so forth.

17 I proposed hiring Sharon Hammer as the city
18 administrator, and I think she was unanimously approved
19 and endorsed by the council. And she started in June of
20 '08. So Sharon Hammer was the city administrator from
21 June of '08 until later.

22 Q. Through the end of your term?

23 A. Through the end of my term.

24 Q. How would you gauge her performance as a city
25 administrator during that period of time?

Page 11

1 A. I thought she was outstanding in all respects.
2 Very enthusiastic. She took EMT training, became a paid
3 on call firefighter and was totally engaged in the city
4 and, you know, I think, served our city very, very,
5 remarkably.

6 I spent a lot of time with the Boeing Company
7 managing large groups of people, and she was one of the
8 best people I had worked with over 30-some-odd years.

9 Q. Did you ever come to know Sharon Hammer to
10 have engaged in any misconduct during your term as
11 mayor?

12 MR. NAYLOR: Object to the form.

13 THE WITNESS: Not that I know of, no.

14 Q. (BY MR. SWARTZ) At some point in time, did
15 Michelle Frostenson, the city treasurer, present
16 allegations to you about misconduct that she believed
17 Ms. Hammer to have engaged in?

18 A. Yes.

19 Q. Do you recall when that was?

20 A. You just asked me a little while ago about
21 reviewing dates, and I went back and reviewed the
22 October 5th meeting with Michelle Frostenson. I didn't
23 have it in my calendar as "Meet with Michelle
24 Frostenson," but it was October 5th of 2011.

25 Q. Do you recall where the meeting took place?

Page 12

1 A. Yeah, my office.

2 Q. And did Ms. Frostenson alert you to why she
3 was wanting to meet with you prior to the meeting?

4 A. No, she -- I had an open-office policy.
5 Anybody could wander into my office anytime they wanted
6 to. And she came in and she said, "Mayor, I have
7 something to discuss with you." I'm trying to say words
8 that are my impressions, and they may not be perfectly
9 accurate.

10 Q. Certainly.

11 A. But, you know, somebody says, "Oh, sure, come
12 on in." And she had the little stack of papers in her
13 hand. And she said, "I wanted to talk to you right now
14 while Sharon isn't in the office."

15 I said "Oh, okay." And she started with an
16 allegation that I thought was very serious, but not
17 about Sharon. The allegation was that she was very,
18 very much concerned about the audit that was coming up
19 in December, because we were going to be -- you know,
20 the books were closed at the end of the fiscal year, end
21 of September.

22 And she said, "I am really worried about the
23 audit report, because there's been improper vacation
24 accruals going on, and it looks like it's about
25 \$133,000."

Page 13

1 I said, "Whoa, didn't know anything about
2 that." And I said, "Oh." So the second thing that she
3 was very much concerned about was improper charging of
4 our firefighters to the State of Idaho and to BLM and
5 maybe the forest service when we went out on a wildfire
6 fighting assignment. And I said, "Oh."

7 Then in a kind of conspiratorial manner, she
8 said, "Now, as far as Sharon is concerned," and so she
9 had that -- you know, her concerns for her job first.
10 Yeah, \$133,000 mischarged, that's a big deal. That was
11 for the total staff. And then also cheating the State
12 of Idaho -- mischarging or cheating the State of Idaho
13 or the BLM, a federal agency, that's a big deal.

14 So I had those two things in my mind, like,
15 whoa, these are real revelations. And then she started
16 into the, I'll say, personal stuff of Sharon driving the
17 city vehicle, and I'm trying to remember what the other
18 thing was.

19 But I somewhat stopped listening at the city
20 vehicle thing, because that was a surplus police car
21 that was, basically, scrap value. And I was -- I had my
22 mind full of the 133,000 bucks. And then she went into
23 other personal things, like Sharon Hammer is chasing
24 around with Eric Evans, you know, the building
25 department guy.

Page 14

1 And so by that time, I was just listening, not
2 answering, not responding. I said, "Okay. Okay. I'll
3 have to look into this." And then she left.
4 Now, what kind of concerned me about this was,
5 say, okay, Michelle is putting together like a package
6 of allegations about Sharon Hammer. Like she was, you
7 know, putting this whole report together. And I
8 remember that she and Council Member Ribí, apparently,
9 had done one of these things before when they got
10 Virginia Egger, the city administrator, way back in '07,
11 removed.
12 And you say, "Well, what do you know about
13 that?" Well, soon after I was elected, Council Member
14 Ribí sat down with me, like in the spring of '08, and he
15 had a dossier of material that he showed to me on
16 Virginia Egger with some checks in there that were
17 improperly written.
18 And I said, "Oh." I says, "Well, that's why
19 she was" [sound effect]. They put the story together
20 that she had resigned and everything, but they gave her
21 six months' severance pay, and I thought, "Gee, that's
22 interesting. How do you resign and get severance pay?"
23 But I dismissed it then. I just, you know,
24 kind of forgot about it until this day when Michelle
25 Frostenson came to me, because then it triggered my

Page 15

1 memory, "Hmm, wasn't" -- "weren't those checks supplied
2 to Council Member Ribí by the treasurer, Michelle?
3 Don't know."
4 But in any event, at that point, I'm thinking,
5 right away, something kind of smells here. It's just
6 not passing the smell test. You know, Michelle had all
7 of this time, and all of a sudden one month before the
8 election and da-da-da.
9 And I thought, well, the auditors don't arrive
10 until December, so we have some time to do our own
11 investigation, look into this, take care of it. Right
12 after the election, when all of that is out of the way,
13 and then we can get to work on it. That was my
14 attitude.
15 Q. In addition to the city vehicle, did Michelle
16 Frostenson raise concerns about Sharon Hammer using the
17 city funds to fuel the city vehicle for personal trips?
18 A. I don't recall that, no.
19 Q. Did she raise any concerns about Sharon not
20 reporting her time accurately?
21 A. I don't recall that. She buried the Sharon
22 Hammer improper vacation accrual into that \$133,000
23 story.
24 Q. During your term as mayor, whose job was it to
25 track vacation time?

Page 16

1 A. Track vacation time?
2 Q. Well, so there's \$133,000 that Michelle
3 Frostenson is saying wasn't properly tracked.
4 A. Oh, yeah. Michelle. I mean, preparing the --
5 yeah, Michelle.
6 Q. So that was her job.
7 A. But let me clarify something about the
8 133,000. Later Tammi Hall, the part-time bookkeeper,
9 and I then looked into that 133,000. That was a totally
10 bogus number. When we cut through all of the vacation
11 time accruals that might have been improper -- first of
12 all, the police chief could accrue lots of time, the
13 fire chief can accrue lots of time.
14 There were only a handful of people, and I
15 believe not Sharon, that had accrued vacation time to
16 the tune of about \$13,000, not 133,000. And that's just
17 not a decimal point error. I mean, it was much lower.
18 And when you think about it, what she was
19 really doing -- let's assume for a moment that all 31
20 staff members all had a June 1st anniversary date. For
21 some odd reason they had all been hired in such a way
22 that on June 1st, they started their new year.
23 Well, you could postulate that -- is it May
24 31st -- on May 31st that there would be no vacation
25 accrual, because all of the staff people had taken their

Page 17

1 vacation during that year. On June 1st you'd have 31
2 people times so many hours. You could have 300 -- a
3 half a million dollars' worth of vacation accrual,
4 properly, because they all were assigned a new two weeks
5 or a new four weeks of vacation.
6 So what -- now, my impression was that
7 Michelle Frostenson purposely was trying to mislead,
8 especially the city council, in the report that she
9 made. She was cooking the books.
10 Q. How soon after the October 5th meeting did you
11 come to your conclusions about the lack of veracity
12 behind Ms. Frostenson's allegations?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: About an hour and a half of
15 thinking. Because it's -- you've told me not to use
16 body language, but I'm going to have to describe body
17 language for you to show it. You could say, here's body
18 language one: "I'm very concerned about what's been
19 going on relative to Sharon Hammer's use of the car."
20 Okay? And for you to put this down, say it was very
21 relaxed. It was a simple straightforward conversation.
22 Now, I'm going to take a conspiratorial
23 approach, and I'm going to be up on the table like this
24 saying, "You know what, I have these things." You see.
25 And so body language does count, straight words don't.

Page 18

1 Because your stenographer here can use the very same
2 words, but if you don't have the body language
3 associated with it, they don't mean anything.

4 What I'm suggesting to you is body language.
5 She was -- it's as if she was trying to get me engaged
6 in the -- and I'm not going to use the word -- in a
7 collusion.

8 Q. (BY MR. SWARTZ) Did you have any concern
9 about Sharon Hammer's use of the city vehicle?

10 A. Not at all. It was a surplus vehicle. If you
11 take the VIN number -- later on I looked at the trade-in
12 value. It was \$1,650, which is way below the asset
13 control point that we had in the city of \$5,000. And
14 when you look at CARFAX and you see a surplus police
15 vehicle with 130,000 miles on it, it's basically junk.

16 Q. Did you ever give Sharon Hammer permission to
17 utilize that vehicle --

18 A. Sure.

19 Q. -- for her own personal use?

20 A. Yeah. Uh-huh.

21 Q. Was that part --

22 A. She said, "Well, I'm going to take it home."

23 And I said, "Well, you're on firefighter duty,
24 so, yeah, go right ahead."

25 Q. And so she could -- with your permission, she

Page 19

1 could utilize that vehicle at all times?

2 A. Yes.

3 Q. Whether it was for business or for personal
4 use?

5 A. Yeah. Let me clarify. You might ask me, did
6 I do this to any other staff members in the city?
7 Number one, the police chief took a command vehicle home
8 every -- used it 24/7, took it home and used it for
9 personal use. Now, city policy authorized --
10 specifically authorized that.

11 I allowed the assistant fire chief, Ray
12 Franco, to take a command car home to his home in
13 Ketchum. And you might say, well, what's that all
14 about? Well, the bulk of the fire incidents, in my four
15 years as the mayor, occurred right down Warm Springs
16 Road in Ketchum, and he was first on the scene in
17 probably four or five fire incidents. And I thought,
18 "Good public service. We've got an assistant fire chief
19 over there, you know, first on the scene."

20 I also allowed Brad Mitchell, in the
21 wintertime -- he's in the street department. He lives
22 in Hailey -- and I authorized him to take the pickup
23 truck with the plow on it home to Hailey if there was
24 the thought of a storm coming up, with the idea being
25 that if he wanted to come back into the city of Sun

Page 20

1 Valley at 3:00 in the morning to get the plowing
2 started, and the county hadn't started doing Highway 75,
3 he'd be able to get back to our city with a proper
4 vehicle to start plowing.

5 So, for instance, with the Brad Mitchell, was
6 the Brad Mitchell stuff specifically authorized by city
7 policy? No, but I thought it was good management.

8 Q. In exercising your discretion in making
9 decisions that that was good management, was that within
10 the scope of your authority, as you understood it, as
11 the mayor?

12 A. Yep.

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: Yep. Within -- as far as I'm
15 concerned, within -- within my authority, yes, operating
16 within the budget that the city provided to me, yes.

17 Q. (BY MR. SWARTZ) Did you relay to Michelle
18 Frostenson that you didn't have any concerns about
19 Sharon Hammer's use of the vehicle?

20 A. Didn't talk to her.

21 Q. After the --

22 A. She left. In fact, I didn't engage her in a
23 discussion. She left, and I didn't discuss it with her.

24 Q. Did you look into any of the allegations that
25 she brought to you on October 5th?

Page 21

1 A. No. All of that was -- I did all of that work
2 when the staff members that were put on administrative
3 leave were all gone. And that's when Tammi Hall and I
4 and others went through things like the mischarging of
5 the -- to BLM; bogus. 133,000; bogus. The use of a
6 surplus city vehicle; trivial. So I dismissed it all.

7 Q. Was that before or after Nils Ribi called a
8 special executive session on November 11, 2011?

9 MR. NAYLOR: Object to the form.

10 THE WITNESS: The analysis that I did?

11 MR. SWARTZ: Yes.

12 THE WITNESS: Afterwards.

13 Q. (BY MR. SWARTZ) Was that before or after the
14 November 14, 2011, executive session?

15 I believe it was the 14th. Maybe it was the
16 17th.

17 A. Well, now you're --

18 MR. NAYLOR: It was Monday the 14th.

19 THE WITNESS: After. I'm trying to recall
20 when various people were put on administrative leave.

21 MR. SWARTZ: Sure.

22 THE WITNESS: And what I did is waited until
23 the building was clear before starting to go through
24 material, just so that the -- all of the people,
25 Michelle, Kelly Ek, all of the people -- those people

Page 22

1 were out of the building, so that when I was going
2 through material, like with Tammi Hall, that I didn't
3 have people kind of looking over my shoulder.
4 Q. (BY MR. SWARTZ) Now, I've already deposed
5 Michelle Frostenson, and she told me that at some point
6 she just got frustrated that you didn't look into any of
7 her allegations, and that caused her to go to Councilman
8 Ribí. And then as I understand it, what ensued was that
9 Councilman Ribí, along with, I believe, Bob Youngman,
10 called a special session on November 11, 2011.
11 Do you recall that special session being
12 called?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: Yeah, pretty clearly. Is
15 Mr. Naylor making remarks when -- I'm not understanding.
16 MR. NAYLOR: Yeah. Just to make it clear,
17 since there isn't a judge here, we can make objections.
18 If I ask you questions, Mr. Swartz can make objections.
19 They're just for the record, object to the form.
20 THE WITNESS: I get it. Because I kept on
21 hearing it. I say, "I wonder what's that all about?"
22 MR. NAYLOR: You can just ignore that.
23 THE WITNESS: All right. I'll ignore that.
24 On Tuesday, November 8th, I lost the election to Mayor
25 Briscoe. We knew that on that day. Two days later,

Page 23

1 November 10th, at about 10:00 o'clock in the morning,
2 Councilman Ribí was in City Hall offices going over
3 invoices and the bills that -- we had this system where
4 council members -- rolling council members would look
5 over invoices. And so Council Member Ribí was in
6 council chambers up at the table, you know, working on
7 invoices.
8 And he said, "I'm calling a special council
9 meeting. I've got Kelly Ek over there noticing the
10 special council meeting for 2:00 o'clock tomorrow. And
11 she has to get this notice out because there's the
12 24-hour rule for noticing special council meetings."
13 I said, "Oh, okay." Surprise to me. I said,
14 "What's the subject?"
15 As I recall, Councilman Ribí said, "Personnel
16 issues. Personnel issues."
17 When Council Member Ribí gets -- oh, when you
18 start to ask like a penetrating question, he repeats.
19 He said, "Personnel issues. Personnel issues." Like
20 that. Kind of like, you know, getting -- sounded like
21 he was pretty agitated and dismissive of me.
22 I'd lost the election. I can see why he might
23 have -- and Council Member Ribí aggressively
24 supported -- in public, in his blog postings, supported
25 Mayor Briscoe for reelection. And so this is two days

Page 24

1 after the loss. So, hey, I'm a lame duck mayor. So I
2 just let that go. I said, "I guess I'll find out on
3 Friday" -- the next day -- "what it's all about."
4 What was interesting about that is Friday --
5 that Friday was Memorial -- not Memorial Day -- what's
6 the holiday in November? It's the other -- Veteran's
7 Day, and so the offices were closed.
8 And I thought, "Gee, this is kind of strange.
9 This must be some kind of a panic deal we're involved in
10 here. I wonder what's going on?" Never connected the
11 two. I thought that we were going to have a special
12 executive session because somebody was found to have
13 been an ax murderer or something, and we had to hurry up
14 and deal with this. Anyway, didn't connect the two.
15 So notice was made. It's also interesting to
16 note that Joan Lamb was out of the, I think -- I'm going
17 to say out of the country -- well, not available. And
18 so it was council president, then Mayor-Elect Briscoe,
19 Councilman Ribí and Councilman Youngman.
20 Q. (BY MR. SWARTZ) And yourself?
21 A. And me, yeah.
22 Q. Was anyone else present at the November 11
23 meeting?
24 A. Yeah, city attorney, Adam King, and Michelle
25 Frostenson, treasurer.

Page 25

1 Q. When you arrived at the November 11th meeting,
2 what did you learn was the personnel issue?
3 A. Okay. I'm not going to say we swore an oath,
4 but our policy for my four years was when we're in
5 executive session, it's confidential. So what -- how am
6 I supposed to answer you now?
7 Q. Well, you're under subpoena, and you're being
8 commanded to provide the testimony that I'm asking you
9 about today. If there's some privilege that is
10 recognized by law, that would be an exception to what is
11 talked about today, but your policy would not trump a
12 subpoena.
13 A. I'm going to trust all of you guys on this,
14 that now I'm going to reveal the confidences that we had
15 said that we wouldn't be discussing with anybody, and I
16 have not discussed this with anybody. Okay?
17 Q. All right.
18 A. Well, here we go --
19 Q. Other than the folks within the executive
20 session?
21 A. Correct.
22 Q. Okay.
23 A. Once again, I'm sitting there not knowing
24 what's going on. Michelle Frostenson goes into that
25 same set of allegations that I'm -- that I got from her.

Page 26

1 And as I recall, there were more than a half a dozen,
2 some number. I took no notes. I didn't take anything
3 with me out of the meeting, so I had no way of
4 reproducing, physically, what actually happened there.

5 She opened with the same discussion about the
6 \$133,000 improper vacation accrual, and talked about her
7 concern about losing her job through the audit. I said,
8 "Oh, okay, I've heard that before."

9 The next element was, you know, the
10 mischarging the BLM, the State of Idaho, et cetera, et
11 cetera. Also I had heard on October 5th. I thought,
12 "Okay. Now I see what this meeting is about. This is
13 serious, those two elements."

14 Then it moved into the Sharon Hammer material
15 of using the car and all of that. And I'm thinking,
16 "Okay. Now, where is this going? Is it that Michelle
17 Frostenson is trying to attach the improper charging to
18 BLM, et cetera, onto Sharon? Is that where we're headed
19 with this? You know, what's happening?"

20 And at a couple of points in this discussion,
21 while Michelle was having her discussion, Council Member
22 Ribi helped her with the discussion, like "you mean" or
23 "that is," something with some either modifications or
24 improvements or correction.

25 And so I'm looking at Councilman Ribi, and I'm

Page 28

1 she's in the office, we'll go around the corner." So we
2 took -- we took that thought, went over to Sharon
3 Hammer's office and said, "There's a list of
4 allegations." We didn't give her anything. We didn't
5 show her a piece of paper and say, "See what" -- didn't
6 do that. It was verbal. Everything was verbal.

7 And she said, "There's no way." She was hot.
8 She said, "I've done nothing wrong. You can come in
9 here with \$1 million" -- I remember the phrase -- "You
10 can come in here with \$1 million and offer it to me, and
11 I'd still say no."

12 And I thought, "Okay. Good. Now we've got
13 more time to figure out what's really going on."
14 Because this whole thing looked like a kangaroo court,
15 looked like it was cooked. And I said, "Okay.
16 Fortunately she's stiff-armed that thing, now we're" --
17 "we have some time to get down to what are we really
18 going to do?" Because this little Mickey Mouse thing
19 that was put together was totally improper, in my mind.

20 That's the result of that meeting. Then we
21 all went home.

22 Q. Did you share with any of the council members
23 at that November 11 meeting that you believed the
24 allegations against Sharon Hammer to be baseless?

25 A. I had no -- I hadn't done my analysis or

Page 27

1 looking at Michelle, and I say, "Bingo. This is" --
2 "Mayor Thorson must have been in the same kind of
3 meeting way back in '07." So I said, "Hmm."

4 So the meeting continued on, and there was a
5 consensus of council members that we should immediately,
6 if not sooner, dismiss Sharon Hammer. Offer her a deal
7 where we've got all of these allegations and have all of
8 this material, and you either -- you either -- we'll let
9 you resign with -- I think Council Member Ribi suggested
10 three months of severance.

11 And with three council members, once again,
12 looking -- going all of the way back to what's my role,
13 if three council members are saying that they want her
14 dismissed, I think I have to follow that order. I don't
15 think that I can stiff-arm that, because the council
16 members -- she's an approved -- she's an approved staff
17 member.

18 You have to get the approval of the council to
19 hire her and fire her or force her to resign. A mayor
20 can't independently do that, in my understanding. I
21 couldn't wander into her office and say, on my own,
22 "You're out of here."

23 So Adam King and I were tasked with the
24 assignment of taking this offer to Sharon Hammer. And
25 she had been in the office that day. And he said, "Hey,

Page 29

1 anything. I let the -- I let the car thing, I let that
2 go. I wasn't going to like argue with council members
3 about a triviality. Those two serious things needed
4 investigation. I had nothing. I had no -- at that
5 point, I had no way of confronting anybody about the
6 133,000 bucks. That came later.

7 Q. Did you -- at that November 11 meeting, did
8 you come to know why the council members were calling
9 for the dismissal of Sharon Hammer's employment?

10 A. The council members went down through those
11 multiple allegations, and they said, "That's enough for
12 us. Here you go."

13 Q. And when you're saying dismissal, you're
14 saying they wanted to fire her; right?

15 A. Yes. But they -- I think -- the impression I
16 had was they had plenty of material to fire her right
17 there, they thought. "How about you go let her resign
18 with a three-month package, and this will all go away.
19 She'll disappear, take her three months, it will be
20 over."

21 Q. Was there any discussion about preferring a
22 resignation over the termination of her employment?

23 A. I don't recall.

24 Q. Was there any discussion about, if her
25 employment was terminated, she had to be presented with

Page 30

1 the allegations and have an opportunity to respond to
2 them?

3 A. Didn't have that discussion, no.

4 Q. Did anyone raise the allegation that what
5 Ms. Hammer had allegedly engaged in was criminal in
6 nature?

7 A. There was -- I have to be really, really
8 careful, because this is an accusation, I think. So I
9 have to be very, very careful of trying to rack my
10 memory of a meeting with no notes or anything. There
11 was -- I think Council Member Ribi casually said, in a
12 little parenthetical phrase, "There could be criminal
13 charges here." That's what I recall.

14 Q. Do you recall leaving that November 11th
15 meeting, along with Adam King, and telling Sharon Hammer
16 that the allegations being made against her in that
17 November 11th executive session included allegations of
18 criminal misconduct?

19 A. I didn't say that, but Adam King, I think,
20 said it.

21 Q. Was that relayed to Sharon Hammer, as you
22 recall it?

23 A. In her office, yeah. Now, you may ask me, are
24 you perfectly, perfectly 100 percent sure about that?
25 What I just said was I thought -- I think I remember a

Page 32

1 Q. Right. We won't question you on the location
2 of meetings, just what you recall from those meetings.
3 Okay?

4 Prior to the November 11, 2011, executive
5 session, had Sharon Hammer ever come to you and
6 complained about Nils Ribi's conduct toward her?

7 A. Yeah, multiple times over a period,
8 especially, of two years.

9 Q. Two years predating this November 11th, 2011,
10 meeting?

11 A. Right.

12 Q. Prior to the November 11th, 2011, meeting, had
13 you ever spoken to Mr. Ribi about Ms. Hammer's
14 complaints about his conduct toward her?

15 A. Yeah. "Hey, you can't do that. Hey, what are
16 you doing?" Did I sit with him in a recorded session
17 with television? No. Did I, over a period of time, at
18 various times -- especially after Council Member Ribi
19 won reelection in November of '09 with 77 percent of the
20 vote, I think. Right after that, he was on a roll. His
21 behavior became just untenable.

22 Q. Did you observe his conduct toward
23 Ms. Sharon -- Ms. Hammer -- specifically any conduct
24 that you found to be untenable?

25 MR. NAYLOR: Object to the form.

Page 31

1 casual remark in parentheses by Council Member Ribi
2 about, "This could rise to the level of criminal
3 charges."

4 And when he said that, I was thinking of
5 cheating the BLM. And I'm thinking, yeah. So I kind
6 of, you know, said, "Man, we really have to get to the
7 bottom of this." I do vaguely recall Adam King telling
8 Sharon that there could be criminal charges involved
9 here.

10 Q. After your discussion with Adam King and
11 Sharon Hammer, following the November 11th meeting, did
12 you convey to the city council that Sharon Hammer was
13 not accepting the offer of resignation?

14 A. I think that occurred at the next executive
15 session.

16 Q. And I'll represent to you --

17 A. Now you're getting to stuff that I'm really
18 vague about. I don't even remember where the executive
19 session on that Monday was held.

20 Q. The November 11th --

21 A. I'm still under oath; right?

22 Q. Yes.

23 A. I can't remember that. Because how can you
24 jump from remembering something really clearly, and then
25 there's the next meeting and it [sound effect].

Page 33

1 THE WITNESS: Yes.

2 Q. (BY MR. SWARTZ) Can you recall any specific
3 incident where you saw Mr. Ribi approach Ms. Hammer in a
4 threatening manner?

5 MR. NAYLOR: Object to the form.

6 THE WITNESS: Let's put it in context.

7 Multiple times in public meetings he was chastised, for
8 instance, by Council Member Joan Lamb about his behavior
9 publicly. See, so you don't even have to -- you can go
10 to the -- go to our Granicus audio system and listen to
11 that behavior.

12 But there's one that stands out to me that --
13 and once again, with the dates and everything, I can't
14 recall. I think it was part of a budget session where
15 Sharon came around the corner after -- we were at
16 recess, and Sharon came around the corner going back
17 into council chambers, and she was visibly distraught
18 that -- I wasn't present exactly where -- where Council
19 Member Ribi used abusive language on her, but he did
20 this in front of David Blampied. And you'll have to ask
21 David exactly what happened, because I wasn't there,
22 right there, but I did talk to David afterwards.

23 And let's talk about body language again.

24 Okay? Which, of course, you can't put, so you're going
25 to have to figure out how to describe this. For

Page 34

Page 36

1 instance, you can tell somebody, "Look, Sharon, I've
2 asked you multiple times to do these spreadsheets a
3 certain way, and you've refused to do them. You keep on
4 telling me that, you know -- that you have to ask the
5 mayor. Well, that mayor doesn't know what his job is."
6 Okay? And that's close to it.

7 Now watch different body language. "Hey,
8 Sharon, I've told you multiple times, and I want you,
9 the next time" -- you see how the words are the same?
10 And what I think is that that borders on assault, to me,
11 when you approach somebody like that.

12 Going back to my experience at Boeing Company,
13 Council Member Ribí would have been disciplined over a
14 period of time, and at some point would have been fired
15 in the corporate world. Apparently, the public service
16 world is -- I don't know if the rules are different.

17 They shouldn't be.

18 But I had no authority to fire him, but I
19 would have. In fact, I mentioned to Mayor Briscoe that
20 had I been reelected, I would have figured out some way
21 of asking for Council Member Ribí's resignation. That's
22 how serious I am about it.

23 Q. (BY MR. SWARTZ) And that was in response to
24 his treatment of Ms. Hammer and others at the city?

25 A. Yeah.

1 you mean --

2 Q. (BY MR. SWARTZ) Sure. I mean, do you recall
3 any executive session where the issue of Mr. Ribí
4 possibly having a bias against Sharon Hammer because of
5 her complaints against him would have disqualified him
6 or should have disqualified him from participating in
7 discussions about Sharon Hammer's employment?

8 MR. NAYLOR: Object to the form.

9 THE WITNESS: Absolutely. As soon as Sharon
10 Hammer filed suit in November, I thought the -- and I
11 can't remember who all was named in the suit, but I was
12 thinking that Council Member Ribí, Youngman -- I don't
13 know if Adam King was named in that first round. But I
14 thought all of -- all of the people named there should
15 not be then going to meetings strategizing how they were
16 going to blunt the suit. I thought it was weird.

17 Q. (BY MR. SWARTZ) Did you raise your concern?

18 A. I thought I did.

19 Q. Do you recall when you raised your concern?

20 A. It must have been after the lawsuit -- no.

21 No. No. It had to be before that, because it was
22 already -- I have to try to get the time line in my
23 mind, but I'm thinking that the accusations had already
24 been made on November 11th.

25 So right away there were at least three

Page 35

Page 37

1 MR. NAYLOR: Object to the form.

2 THE WITNESS: Yeah. He was -- he -- he has a
3 personality characteristic that it's his way or the
4 highway. I mean, it's just -- it's just the way it is.
5 That's the way he is. But he especially -- he really
6 stepped up the rhetoric with Sharon. He didn't like her
7 because she was smarter than him, and he didn't like her
8 because she was a female smarter than him. That's my
9 opinion. You can put that down. That's my opinion.

10 May I add something?

11 Q. (BY MR. SWARTZ) Please.

12 A. The first two years of my position as mayor,
13 Council Member Ribí was the council president. We spent
14 two years working very closely together, projects, going
15 to meetings together, doing all kinds of, I think, good
16 things, and as soon as Council Member Ribí was
17 reelected, it went [sound effect]. It flipped. He just
18 [sound effect]...

19 Q. Did you ever discuss with Mr. Ribí that in
20 light of Sharon Hammer's complaints about his conduct
21 toward her, that he should not be participating in
22 discussions regarding allegations about her?

23 MR. NAYLOR: Object to the form.

24 THE WITNESS: I was -- you have to rephrase
25 that. I'm getting a little bit confused about what do

1 council members that were on the other team, and so I'm
2 thinking, okay, council member, you've brought
3 allegations and everything and now you're sitting in on
4 meetings where you're strategizing how to, you know, go
5 after this lady. It didn't -- it wasn't right to me.
6 And I -- when I mentioned it, it was just dismissed.
7 Just kept on coming to the meetings.

8 MR. SWARTZ: Why don't we go ahead and take a
9 break, everybody can stretch their legs, we'll come back
10 and pick up.

11 (Break taken.)

12 MR. SWARTZ: Back on the record.

13 Q. (BY MR. SWARTZ) Mr. Willich, I'm going to
14 hand you a document. It's a November 12, 2011, letter
15 from James Donoval to you, and it's Bates No.
16 SH-Timeline 8 through 12.

17 I'll ask you to take just a moment and review
18 that and let me know when you're done.

19 MR. NAYLOR: What tab is that? Is that from
20 your exhibits?

21 MR. SWARTZ: Tab 3.

22 MR. NAYLOR: Thanks.

23 THE WITNESS: There's a good chance that I
24 never saw this.

25 Q. (BY MR. SWARTZ) You don't recall one way or

Page 38

Page 40

1 the other or --

2 A. I remember, at that time, there were so many
3 things happening, that if I got a package from Jim
4 Donoval, let's say in a manila envelope, I wouldn't open
5 the envelope. I just left it.

6 Q. And that's because there was a lot going on or
7 you didn't care to hear what he had to say?

8 A. Well, let me give you a Machiavellian answer.
9 If you didn't see it, you can't know about it. And so
10 if I didn't see it, I don't know.

11 Q. And you don't recall one way or the other,
12 today, whether you saw that November 20th --

13 A. I have no idea. Because I would get materials
14 from all kinds of people, including Attorney Naylor,
15 that I just ignored.

16 Q. Okay.

17 A. And I had been advised, when you're under
18 deposition, not to make sarcastic remarks, but in the
19 olden days it was called "plausible deniability," and
20 I'm afraid someone's going to accuse me of that. Okay.
21 You'll notice I didn't take any notes, nor did I take
22 any material out of the November 11th meeting.

23 Q. Do you recall the meeting that took place
24 after the November 11th meeting? This would be the
25 November 14, 2011, city council session?

1 executive session from 9:00 a.m. to 12:00 p.m.

2 Do you see that there?

3 A. Right.

4 Q. And it was to discuss a personnel issue?

5 A. Right.

6 Q. Do you recall that?

7 A. Right.

8 Q. Who was the employee that was discussed during
9 that executive session?

10 A. Sharon Hammer.

11 Q. And what specifically about Sharon Hammer was
12 discussed in that session?

13 A. Well, if you look -- by the way, see, these
14 minutes are signed by Mayor Briscoe, so that must be
15 like way later. So I'm reading this for the first time.

16 Q. Do you recall what was discussed about Sharon
17 Hammer in the executive session that went from 9:00 a.m.
18 to 12:00 p.m. on November 14, 2011?

19 A. Yes. I'm going to say that Sharon Hammer
20 totally rejected the offer, and then we started to move
21 in the direction of bringing an independent investigator
22 in to look at all of this -- everything.

23 Q. Do you recall whose idea it was to retain an
24 investigator?

25 A. Well, according to these notes, it said

Page 39

Page 41

1 A. That one's almost entirely lost on me. That's
2 just where we informed -- the best that I can recall is
3 we informed the city council that Sharon Hammer had
4 rejected out of hand the offer.

5 Q. If you'll go to Tab 4, you'll see the agenda
6 for that meeting. And you're welcome to refer to it to
7 refresh your recollection.

8 As I understand it -- I'm sorry, that was the
9 November --

10 A. This is November 11th -- dated November 11th,
11 is Tab 4.

12 Q. It is. So let's go to --

13 A. What's kind of strange about this, this is
14 dated up here November 11th, but it looks like material
15 that the content of it seems like it's November 14th.
16 This can't be November 11th --

17 Q. Right.

18 A. -- because Council Member Lamb is there.

19 Q. Yeah. So it looks like it is the 14th, and
20 it's on page 2 of those meeting minutes, you'll see that
21 it's --

22 A. Oh, here it is. Here it is.

23 Q. It's reconvening --

24 A. It's reconvening. There you go.

25 Q. Exactly. So it looks like you all go into an

1 Council Member Bob Youngman.

2 Q. Who was directed by the council to locate and
3 hire the investigator?

4 A. It was -- I was directed to hire the
5 independent investigator. And as a courtesy to
6 Mayor-Elect Briscoe, I involved Mayor-Elect Briscoe in
7 the proceedings, because I knew that this was not going
8 to be over in a week. I mean, it just wasn't. It was
9 going to take a lot longer than that.

10 So Mayor Briscoe and I, along -- sitting in
11 city attorney Adam King's office, engaged in an
12 interview process to get a private -- an independent
13 investigator hired.

14 Q. In involving Mayor-Elect Briscoe in that
15 process of hiring an investigator, did you ever tell him
16 that he would have any authority in directing the
17 investigation?

18 MR. NAYLOR: Object to the form.

19 THE WITNESS: I know the question you're
20 asking me. I firmly believed I was still the mayor. I
21 had the executive responsibility until Mayor Briscoe
22 would have been signed in. So as far as I'm concerned,
23 I had the responsibility, and I could have asked any
24 number of people for help, but the authority was mine,
25 period.

Page 42

1 Q. (BY MR. SWARTZ) Directing the scope of the
2 investigation?

3 A. Everything.

4 Q. Did you communicate that to the investigator,
5 Patti Ball, that was retained?

6 MR. NAYLOR: Object to the form.

7 THE WITNESS: It was understood. I mean, it
8 was understood that I was to direct her activities.
9 Like, for instance, giving her names, telling me people
10 to interview. And, remember, it was an interview.
11 Nobody was under oath. Okay? It was an interview to
12 see if we could flesh out, you know, material on what
13 happened.

14 I made, I'm going to admit right now, a huge
15 mistake. The word was "independent investigator." And
16 we had a chance to hire the Perkins Coie firm out of
17 Seattle. And there was a representative in their office
18 in Boise, and we didn't hire that person, and we hired
19 Tammi Hall.

20 Q. (BY MR. SWARTZ) Patti Ball?

21 A. Patti Ball -- Tammi Hall -- Patti Ball. And I
22 think that was a mistake. I think the fix was in on the
23 first day with her.

24 Q. What do you mean?

25 A. She was off the reservation, I'll say, almost

Page 43

1 immediately. When I'm talking to her about making sure
2 that she interviews Councilwoman Lamb and Councilman
3 Youngman, she didn't -- no communication. Just she was
4 noncommunicado. So as far as I was concerned, she
5 wasn't working for me almost right away.

6 Q. Who do you think she was working for?

7 MR. NAYLOR: Object to the form, foundation.

8 THE WITNESS: That became obvious a little
9 later on when I saw the report. And I think Attorney
10 Naylor was directing her efforts from -- right from the
11 beginning.

12 Q. (BY MR. SWARTZ) And what was Attorney
13 Naylor's role with respect to -- what was his
14 involvement with the city at that time?

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: It was. He came on board --
17 remember the lawsuit?

18 Q. (BY MR. SWARTZ) Yes. That's the Idaho
19 Protection of Public Employees Act lawsuit filed by --

20 A. Whatever the first one was.

21 Q. -- Sharon Hammer?

22 A. Yes. And so Attorney Naylor was representing
23 ICRMP, the insurance company, and specifically Council
24 Member Ribi, right from the beginning. In fact, I had
25 had that discussion with Attorney Naylor.

Page 44

1 I know I'm not supposed to make sarcastic
2 remarks, but I will to give you the idea. When I'm
3 involved with any kind of activity, I want to know which
4 person has which dog in the hunt. Okay?

5 And so Attorney Naylor was seriously
6 representing the insurance company. I mean, he was
7 engaged by ICRMP, the insurance company, for legal
8 representation. I said, "Oh, okay, well, Attorney
9 Naylor then is on the anti-Sharon Hammer team." And I'm
10 thinking, "Okay. Now, how does that affect all of this
11 that's going on in this independent investigation?"

12 If you look at that report, there's no mention
13 in there about the -- that I recall, of the \$133,000
14 bogus allegation of vacation accrual. It was all -- it
15 looked like Patti Ball was part of the prosecutor's
16 office going after -- you know, building the
17 investigation against Sharon Hammer. It wasn't a
18 balanced kind of thing.

19 In fact, if you look at the report that really
20 triggered me, I make a bunch of allegations down there
21 and talk about how Kelly Ek had come to me various times
22 really upset, distraught over her treatment by Nils
23 Ribi, and Patti Ball put an editorial remark down at the
24 end of my discussion that says, "Kelly Ek says that this
25 didn't happen."

Page 45

1 Well, what kind of independent investigation
2 is that where she's editorializing through the thing.
3 So, anyway, I dismissed that like right away.

4 Q. After you came to the conclusion that Attorney
5 Naylor was on the anti-Sharon Hammer team, did he sit in
6 or participate by phone in any executive sessions?

7 MR. NAYLOR: Object to the form.

8 THE WITNESS: I believe, yeah. I think so.

9 Q. (BY MR. SWARTZ) And do you recall any
10 comments made by Attorney Naylor that you observed to
11 influence any of the city council members' decision
12 making?

13 MR. NAYLOR: Object to the form. Object to
14 the form -- hold off Mr. Willich -- and I'll instruct
15 you not to answer, because that --

16 THE WITNESS: You can't direct me anything,
17 Kirt.

18 MR. NAYLOR: And that means attorney-client
19 privilege --

20 THE WITNESS: I'm sorry, you cannot direct me
21 to answer anything. I'm in a deposed setting. I'm
22 supposed to answer everything that I can.

23 MR. NAYLOR: Mr. Willich, let me just make my
24 record, and we'll go from there.

25 THE WITNESS: Okay. You go ahead.

Page 46

1 MR. NAYLOR: That's an attorney-client
2 privileged communication, which Mr. Willich has no
3 authority to waive, and so I would instruct him not to
4 answer.

5 And for purposes, Mr. Swartz, that we tried to
6 enter into a stipulation to seek your voluntary
7 agreement to not invade that directly, which you
8 refused, this question specifically is asking for
9 attorney-client privilege information. So I'd ask you
10 to withdraw the question rather than get into this. But
11 I'll instruct Mr. Willich not to answer that question.

12 And, Mr. Willich, you need to understand, you
13 don't have the authority to waive the privilege of any
14 attorney-client communications between counsel
15 representing the city, because the city holds that
16 privilege.

17 So are you willing to withdraw that question,
18 as phrased, Mr. Swartz?

19 MR. SWARTZ: It doesn't call for disclosure of
20 attorney-client privilege.

21 MR. NAYLOR: Let's just go back --

22 THE WITNESS: I want you to stop this
23 discussion right now.

24 MR. NAYLOR: Hang on, Mr. Willich.

25 THE WITNESS: I want you to stop talking for a

Page 48

1 whether he observed a city council member be influenced
2 by a comment made by you, "yes" or "no."

3 MR. NAYLOR: No. And that --

4 MR. SWARTZ: I'm not asking for the substance
5 of the comment.

6 Q. (BY MR. SWARTZ) Do you understand the
7 question, Mr. Willich?

8 MR. NAYLOR: Mr. Swartz, let's take a break
9 and get a judge on the phone, because that invades the
10 attorney-client privilege. And if you're intending to
11 go in that same direction, then I think we need some
12 direction here from the judge.

13 THE WITNESS: Mr. Swartz, Attorney Naylor is
14 not my attorney.

15 MR. NAYLOR: That's correct.

16 THE WITNESS: So I have no idea what he's
17 talking.

18 MR. NAYLOR: That's correct. But,
19 Mr. Willich, I represent the city --

20 THE WITNESS: Did you say "That's correct"?

21 MR. NAYLOR: That's correct. But I represent
22 the city, over whom you have no authority to waive the
23 privilege at this point in time. So I'm not allowing
24 him to answer. And this is exactly why we tried to get
25 a stipulation, so that you wouldn't go this direction.

Page 47

1 moment.

2 MR. NAYLOR: Mr. Willich, we need to make a
3 record. This is a deposition, and we're all
4 participants, and so there's a process that we follow.

5 The question is: "Do you recall any comments
6 made by Attorney Naylor that you observed to influence
7 any of the city council members' decision making."

8 Now, Mr. Swartz, if that doesn't call for a
9 specific communication of advice by legal counsel --

10 MR. SWARTZ: It doesn't. I'm asking for a
11 "yes" or a "no," that's all.

12 Q. (BY MR. SWARTZ) Can you answer that question?

13 MR. NAYLOR: No. That is more than -- because
14 the "yes" or "no" tells the substance of the
15 communication.

16 MR. SWARTZ: It doesn't. I'm asking for a
17 "yes" or "no."

18 Q. (BY MR. SWARTZ) Can you answer that question,
19 Mr. Willich?

20 MR. NAYLOR: Okay. Let's take a break.

21 MR. SWARTZ: It's my deposition.

22 MR. NAYLOR: Yeah. We're going to call the
23 judge if this is the line of questioning that you're
24 going to pursue.

25 MR. SWARTZ: I'm asking for him to tell me

Page 49

1 MR. SWARTZ: I'm asking for a "yes" or a "no."
2 I'm not asking for what his comment was.

3 Q. (BY MR. SWARTZ) I'm asking about your
4 observations, whether you observed a comment he made
5 influence a city council member, either a "yes" or a
6 "no?"

7 MR. NAYLOR: Correct. I understand the
8 question, but I still believe it invades the
9 attorney-client privilege.

10 THE WITNESS: I'm going to help you, Eric,
11 clean this up. You just asked me about council members.
12 I want you just to add "or mayor."

13 MR. SWARTZ: Or mayor.

14 MR. NAYLOR: And --

15 THE WITNESS: Okay. And I can skip --

16 MR. NAYLOR: -- I'm instructing you not to
17 answer that.

18 THE WITNESS: And I can skip the council
19 members, but I can discuss very clearly my relationship
20 as mayor with Attorney Naylor. How does that sound?

21 MR. SWARTZ: Sure.

22 THE WITNESS: Yeah. Attorney Naylor tried to
23 manipulate me, maneuver me, adjust me, influence me,
24 almost every day, from the time he was on board to the
25 day that I was sworn in, inappropriately, I say.

Page 50

Page 52

1 Because he even invited me to his law offices with
2 another attorney in his office to romance me, to get me
3 to, you know -- can't you do this? Can't you do that?
4 I think inappropriately.

5 And so your original question had to do with
6 council members. I don't know, he could have had all
7 kinds of conversations. And I can cave on the idea of
8 council members, but I know exactly what his approach to
9 me was, and I can only speculate that he did everything
10 he could to maneuver council members.

11 MR. NAYLOR: Object to the form, foundation.

12 THE WITNESS: Does that help at all?

13 Q. (BY MR. SWARTZ) I appreciate you sharing
14 that. And it gets us past the city council and your
15 observation of how they may have responded in response
16 to Mr. Naylor's participation.

17 At any time did you direct Patti Ball to
18 contact Mr. Naylor as part of her investigation?

19 A. No.

20 Q. Did you --

21 A. Let's be really careful. "Direct"? Did I --
22 was there a telephone call and, say, did I say, "Hey,
23 Patti, you've got to be in contact with Kirt Naylor?"
24 No. "Did I email Patti Ball and say, Patti Ball, make
25 sure you stay in contact with Kirt Naylor?" No.

1 the judge.

2 MR. SWARTZ: Yep. We'll come back another day
3 on that one.

4 MR. NAYLOR: Let's do that.

5 Q. (BY MR. SWARTZ) Are you, okay, Mr. Willich?

6 A. Let's just take it easy a little bit, because
7 I'm trying to figure out how an attorney here who isn't
8 my attorney has decided that any discussion that he and
9 I might have had is involved in attorney-client
10 privilege. He's not my lawyer.

11 MR. NAYLOR: I can explain it to you.

12 MR. SWARTZ: I understand. Not today,
13 Mr. Naylor.

14 THE WITNESS: I don't need it. He was never
15 my attorney.

16 Q. (BY MR. SWARTZ) Let's keep plowing ahead.

17 A. Yeah.

18 Q. As you understood it, what was the scope of --
19 well, let me ask it this way: You've already stated
20 that Mr. Naylor's involvement came at the time that
21 Sharon Hammer filed her first lawsuit; right?

22 A. Yeah.

23 Q. Did you ever retain Mr. Naylor to participate
24 in the fact-finding investigation that Patti Ball was
25 conducting?

Page 51

Page 53

1 What are the other forms? Did I see her in
2 Albertson's and say, "Would you" -- no. Patti Ball was
3 supposed to be doing my investigation, not Kirt Naylor's
4 investigation. Because, remember, he's done -- he's on
5 the other team. Why would I want to get my independent
6 investigation contaminated by this outside influence?
7 Didn't want it. Have him hire his own people, if that's
8 what he thought he needed.

9 Q. Did you convey that to Mr. Naylor?

10 MR. NAYLOR: Object to the form, calls for
11 attorney-client privileged information. And if that
12 doesn't, Eric, I'm not sure what does. That's a direct
13 communication between an attorney and his -- and the
14 mayor the city represents, so I'll ask you to withdraw
15 the question.

16 Will you withdraw the question?

17 MR. SWARTZ: I'm not asking him for legal
18 advice. I'm asking whether he told you to stay out of
19 Patti Ball's way.

20 MR. NAYLOR: And if that isn't a communication
21 between an attorney and his client dealing with
22 instructions to the client or the attorney about what he
23 should do in context of his legal representation -- that
24 is an attorney-client privilege. So either withdraw the
25 question, or mark it, and we can take it up later with

1 A. No.

2 MR. NAYLOR: Object to the form.

3 Q. (BY MR. SWARTZ) Patti Ball filed an
4 affidavit, in one lawsuit or another, that said that
5 unidentified certain city officials directed her to be
6 in contact with Mr. Naylor.

7 Do you have any knowledge of who within the
8 city would have authority, other than you, to direct her
9 to contact Mr. Naylor?

10 MR. NAYLOR: Object to the form, foundation.

11 THE WITNESS: No. That wasn't me. I have no
12 idea who it might have been.

13 Q. (BY MR. SWARTZ) And while you -- during your
14 term as mayor, could a single city council member --
15 would they have authority to go to Patti Ball and say,
16 you need to contact Mr. Naylor, or does the city council
17 have to act in session and by resolution?

18 A. No single member, or collectively, would have
19 authority to direct Patti Ball.

20 Q. Do you recall what the real purpose of the
21 investigation, as you understood it -- November 14th,
22 when it was approved in executive session -- what the
23 real purpose of that investigation was?

24 A. Yeah.

25 MR. NAYLOR: Object to the form.

Page 54

1 THE WITNESS: I was totally confident that
2 what Patti Ball was going to do was to go through all of
3 that material, the allegations, the specific
4 allegations, and analyze, I'll say -- maybe I have an
5 imagination about what an independent investigation is
6 supposed to be. Remember, this commentary about dog in
7 the hunt?

8 MR. SWARTZ: Yeah.

9 THE WITNESS: Okay. Well, I think a real
10 independent investigation would be, let's look at
11 Allegation 1. Okay. Let me get data, let me call
12 people, let me interview people, Allegation 1.
13 Allegation 2, et cetera, et cetera. Allegation 1,
14 couldn't find anything here.

15 As soon as the Patti Ball report came out, it
16 looked like it was preparing for an indictment. I said,
17 "What the" -- "this is junk." In fact, Mayor Briscoe
18 and I had a heated discussion about this in Adam King's
19 office. And you can interview Mayor Briscoe about that.

20 As I recall, Mayor Briscoe said, "What are you
21 doing defending Sharon Hammer for?"

22 And I said, "What are you doing being involved
23 in this witch-hunt thing that you're going to go after
24 her at any cost." And it was a pretty heated
25 discussion. We finally calmed down. But it was pretty

Page 56

1 that's the threat. You better just take the three
2 months and head down the road or we're going to uncork
3 this thing on you. So it was a -- you know, take the
4 three months, and you get to resign, and you go away or
5 we pull all of this other stuff on you. That was the
6 nature of that.

7 Q. (BY MR. SWARTZ) Do you recall Mr. Ribí
8 voicing objection to paying her the six months'
9 severance that was outlined in her contract?

10 MR. NAYLOR: Object to the form, foundation.

11 THE WITNESS: It was -- yeah, in the
12 November -- we're still on the November 11th meeting?

13 MR. SWARTZ: Correct.

14 THE WITNESS: That's how the deal was struck
15 among three council members. Remember, council is in
16 charge. Think about this, council is in charge of this
17 proceeding at that time. I'm an interested bystander at
18 that point.

19 The council is the one that hires and fires
20 those -- you know, the treasurer, the city
21 administrator -- I'm trying to think of who the other
22 is -- maybe it's the clerk, too. I'm trying to remember
23 what -- the city attorney situation.

24 Anyway, there are appointed staff people.
25 Okay. Well, the council in session is the one that

Page 55

1 obvious to me, dog in the hunt.

2 Okay. Kirt Naylor, insurance company, Council
3 Member Ribí, Council President Briscoe, Mayor-Elect
4 Briscoe, they were intent on putting the package
5 together that was going to take her out.

6 MR. NAYLOR: You said "Sharon's company." I
7 was just trying to --

8 THE WITNESS: Insurance company. I didn't say
9 "Sharon's company," I said "insurance."

10 Q. (BY MR. SWARTZ) Let me back up to the
11 November 11th, 2011, meeting. This was the meeting
12 where the allegations were brought to the city council?

13 A. Yeah.

14 Q. I mean, as I understand Sharon's contract, if
15 she was to -- her employment was to terminate without
16 cause, she would have gotten six months' severance; is
17 that your understanding?

18 A. That's the way I understand it, yeah.

19 Q. Why was Mr. Ribí proposing a three-months'
20 severance instead of a six-months' severance?

21 MR. NAYLOR: Objection; foundation, calls for
22 speculation.

23 THE WITNESS: Because it was a -- I think it
24 was a -- oh, you know how you can package a threat and
25 say, here are -- these are the unfounded allegations,

Page 57

1 determines what the deal is. And so council said,
2 "Okay, you and Adam King, you go on over and tell Sharon
3 Hammer she can resign, take three months' pay, and head
4 out. Otherwise, here's all of this other material we're
5 going to bring against you."

6 Q. (BY MR. SWARTZ) Was part of Patti Ball's
7 investigation supposed to include an investigation into
8 Sharon Hammer's allegations about Mr. Ribí's conduct
9 toward her, do you recall?

10 A. During my interview, I added that. Because by
11 that time, I thought, "Okay, I see what happened here."
12 Council Member Ribí had done this, you know, years
13 before with Administrator Egger. And I said, "Uh-huh."

14 So this is the culmination of two years of his
15 abusive behavior, and this was supposed to have been the
16 culmination point. In other words, he builds it, and
17 then, bam, out she goes. I said, "Okay, no." So I --
18 in my interview, I added that material.

19 Q. Let's fast forward to the November 14th
20 meeting. So this would be the second meeting. And this
21 is where the council decided to hire an independent
22 investigator.

23 A. Yeah.

24 Q. On page 2 of the agenda there was a motion by
25 Mr. Youngman to authorize you to engage an attorney to

Page 58

1 conduct the independent investigation.
2 Do you see that at the bottom of page 2 there?
3 A. Yeah, I've got it here.
4 Q. And the only nay to that motion was Mr. Ribí.
5 And my question to you is: Do you have any recollection
6 of whether Mr. Ribí explained why he was voting against
7 the investigation?
8 A. Well, what's confusing to me is -- see, I've
9 never seen -- this is actually the first time I've seen
10 these notes. What's this attorney thing in there?
11 "Engage an attorney"? I was asked to hire an
12 independent investigator, not a lawyer.
13 Q. Was there any concern -- as you understood it,
14 was there any concern about needing a lawyer because of
15 any legal action?
16 A. No, independent investigator. Okay? And I'm
17 trying to remember who the attorney general's office
18 sent to do his investigation. I don't think that guy
19 was a lawyer. I don't get it. Anyway, that's just a
20 side issue, I think. I have no idea why Nils said -- I
21 don't know. You'll have to ask him.
22 Q. During your term --
23 A. I'm not supposed to be speculating; right?
24 Q. Right. During your term as mayor, whose job
25 was it to approve city expenditures?

Page 59

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: "Approve city expenditures"?
3 That's a little bit of a complicated question. Like,
4 for instance, there was a -- there was a chance to buy a
5 surplus BLM brush truck in my first year. It was like
6 \$30,000 or so. Heck of a good idea. I think it's still
7 in the city. That's \$30,000.
8 I went to the council and said, "Hey, we have
9 this" -- because I had no authority just to write a
10 check for 30,000 bucks. I didn't know -- I didn't go
11 check city policy, but I just imagined that you can't do
12 that. It was outside the budget, too. It wasn't a
13 budget item.
14 Let's go through different examples. It's
15 time to hire a contractor to pave the roads. Okay? We
16 go out to competitive bid, et cetera, et cetera. Even
17 though the road paving is in the budget, it's a big
18 dollar amount. So we go to the council, the council
19 deliberates, talks about, let's hire Idaho Sand &
20 Gravel, or whatever, and we go and pave the roads.
21 One day the -- let's go down and start digging
22 in the weeds here. There was a printer-fax machine in
23 the fire station that was continuing to fail and was
24 inop and everything. I authorized that -- to get rid of
25 that thing and surplus it out and get a new printer-fax

Page 60

1 machine. Did I go to the city council and ask
2 permission to? No. I thought that was well within my
3 authority, way inside budget expenditures, and
4 everything, to do that.
5 You could think of other, you know, low-level
6 kinds of things well within the budget. But even
7 something that's in the budget but a high dollar amount,
8 you have to get council approval.
9 Q. (BY MR. SWARTZ) Earlier today you talked
10 about, on November 10th, 2011, Nils Ribí was in City
11 Hall reviewing invoices?
12 A. Uh-huh.
13 Q. And that city council members would rotate as
14 to who would come in and review invoices. Was that part
15 of an approval process that was in place?
16 A. Yeah. It was supposed to have been a rolling
17 council member's job, once a month, to review the
18 invoices. And it generally was, you know, business as
19 usual: Electric bill, gas bill, so forth.
20 And every once in a while there would be
21 larger dollar amounts, but typically those larger dollar
22 amounts had been previously approved by the council, so
23 it was, you know, council members just, you know,
24 checking invoices to see where the money is going.
25 Q. Would they do the same with respect to credit

Page 61

1 card bills?
2 A. Oh, what I subsequently found out that I
3 didn't know about for four years was that there was a
4 whole parallel credit card receipt management system
5 that Michelle Frostenson had that to this day I don't
6 know what that thing was.
7 Q. Do you have any recollection of a yellow sheet
8 system?
9 A. Yep. That was the standard invoice checking.
10 You know, it was a yellow sheet that was typically
11 initialed by the department head and Sharon and a
12 council member and me. So we had a level of checking on
13 invoices.
14 Q. When the city council would meet, would
15 someone present to the city council expenses of the city
16 as being appropriate expenses, just in the normal course
17 of meetings?
18 A. Well, every month at the council meetings, the
19 treasurer, Michelle Frostenson, would make a report on
20 expenditures, and the council would have another
21 opportunity, in an open public meeting, to say, hey,
22 what was this expenditure, and what was that
23 expenditure, and so forth.
24 I will give you an example. When two
25 firefighters went off on a wildfire fight, the one

Page 62

1 firefighter had to have his dogs boarded, because it was
2 one of these quickie things, "You've got to get going.
3 You have to leave tomorrow morning." And I think I
4 authorized \$400 or so to pay for boarding this
5 firefighter's dog for the ten days that they were gone,
6 or whatever it was.

7 And Councilwoman Joan Lamb questioned me on
8 that, and said, "Hey, what's this all about?" And I
9 explained -- told her what I had done, and said that
10 under the same circumstances in the future I would do it
11 again. And she said, "Well, okay."

12 So did council members have the ability to
13 pick through, you know, little -- \$480 or something?
14 Yeah. I would do it again, by the way.

15 Q. Do you recall who -- do you recall whether
16 Attorney Naylor was present at the November 14, 2011,
17 meeting?

18 A. I don't recall. In fact, I don't even know
19 where the meeting was. May I make a comment about the
20 intensity of activity?

21 Q. Sure.

22 A. This thing was coming bam, bam, bam, like
23 that. Big issues. November 10th, executive meeting,
24 boom, boom. November 11th, try to get the administrator
25 fired. November 14th, bam, bam, more stuff.

Page 63

1 And I'm scrambling around trying to figure out
2 how to actually get this -- get the thing under control,
3 so to speak, with a whoa, whoa, whoa, slow, slow way
4 down. Let's do this investigation, let's get the data
5 out here -- gee, do I sound like the president now --
6 and let's -- you know, what do we know about this?

7 Because I was suspicious about the whole
8 thing. I said, "Good, get an independent person in,
9 look at this material, get the facts straight." But
10 then over a period of time, relatively short period of
11 time, I'm finding out that some of the stuff that
12 Michelle Frostenson brought forward was junk. It was
13 just bogus.

14 Q. Did you ever intend the Patti Ball
15 investigation report to be made public?

16 A. No. And you can tell that I did not intend it
17 to be made public, because I told the council members it
18 was to be held in Adam King's office, to be read in his
19 office, and to not be made public.

20 The reason is it was loaded up with what I
21 considered more junk, and I didn't need that to appear
22 in the Mountain Express, that stuff. Because it was all
23 personnel issues and all kinds of things that I thought
24 were improper until we would get to a -- I'll say a
25 clean report and with a new investigator. That's what I

Page 64

1 had in my mind.

2 Q. Did you ever -- once you learned that the
3 investigation was going a direction that was different
4 than you intended, did you ever take any effort to stop
5 the investigation?

6 A. Okay. Now, you used a couple of words in
7 there like I intended, like I expected that I was going
8 to direct this investigation to satisfy me. Huh-uh.
9 That wasn't -- what my intent was was a fair
10 investigation.

11 And when you go look at the forensic audit or
12 you go look at the attorney general's investigation, all
13 of them were tainted by the idea of we're really looking
14 for the crook here. And so -- and Sharon Hammer seems
15 to be a great opportunity.

16 Well, the attorney general didn't find it, the
17 forensic audit was trivial. They finally figured out
18 the \$133,000. Oh, and the improperly paying
19 firefighters was nothing. Okay? So all of the original
20 stuff, you know, that really got me wondering about it,
21 all turned out to be nothing.

22 See, you're going to have to wait just a
23 moment, because I had a thought in my mind that I wanted
24 to get across that had to do with the Patti Ball report.

25 She was finished as far -- December 13th it

Page 65

1 was over, she was off my payroll. I wouldn't have paid
2 her for the report. And I communicated that to the
3 new -- to Mayor Briscoe -- ask Mayor Briscoe -- and to
4 council members.

5 Q. On December 13th?

6 A. No. I communicated that later to the mayor
7 and council that I considered her report to be, you
8 know, not a real report. It was just a list of stuff.

9 Q. What, in particular, transpired on
10 December 13th that led you to conclude that she was done
11 on that date?

12 A. If I remember correctly, it was Mayor Briscoe,
13 Attorney King, and I, were in his office, and I looked
14 at the report, and it looked like it had been -- I'm
15 going to use the word "packaged." And I say, "Well,
16 okay."

17 And my inclination was that Attorney Naylor
18 managed this thing. Because if you were an attorney
19 representing the insurance company, and you had this
20 investigation going on, and you had an opportunity to
21 kind of position it just about right, bingo. I think he
22 had fingerprints on it. So I said, "Hey, I'm out.
23 Done."

24 Q. What do you mean by you're out, you're done?

25 A. It was -- I had seen enough. Don't need

Page 66

1 anymore. Done.
2 Q. Did you communicate that to Patti Ball
3 following the December 13, 2011, meeting?
4 A. She was on her own.
5 Q. What do you mean?
6 A. I wasn't going to start a firing process of
7 Patti Ball -- Patti Ball. As far as I was concerned --
8 she said "Fine," she was going to submit this junk, and
9 we would see where it would go.
10 Q. As I understand it, there was another report
11 made after December 13th?
12 A. I have no idea.
13 Q. Do you recall seeing a report published in the
14 Idaho Mountain Express that was different than a report
15 that you had ever seen before?
16 A. Yeah. Yeah. Here's the Express, and here's
17 what I had seen on December 13th, and man that thing had
18 been massaged.
19 Q. In what way?
20 A. First of all, the very first report was -- the
21 first Mountain Express report had none of the material
22 in there about Council Member Ribb. And I said, "Oh,
23 gee, I wonder how that happened?"
24 I know that I had -- I had purposely inserted
25 a phrase in there that was going to be my little test

Page 67

1 phrase to see if Patti Ball was really going to -- but
2 you'd have to listen to her recorded interview of me,
3 because she -- she even maneuvered my interview around.
4 And I gave her a phrase that I said, "You have
5 to put this phrase in there." And this is -- I'm not in
6 front of a judge now, but I think I'm not going to tell
7 you the phrase until a judge orders me to tell him the
8 phrase. It was a test phrase.
9 I gave her a direct order. I gave her a
10 direct order to interview Bob Youngman. I gave her a
11 direct order to interview Joan Lamb. She dumped my
12 phrase, she didn't interview Joan Lamb, and she didn't
13 interview Bob Youngman, she was done. I'm getting a
14 little excited now.
15 Q. Do you want to take a break? Are you doing
16 okay?
17 A. Oh, no, no, no, I'm good to go.
18 Q. At some point in time you placed Sharon Hammer
19 back on active status; correct?
20 A. Yes.
21 Q. And is that after you had concluded that the
22 allegations of misconduct being made against her were
23 not credible?
24 A. Right.
25 Q. And at that point you had determined that she

Page 68

1 had done nothing wrong?
2 A. Right.
3 Q. Did you communicate that to any of the city
4 council members?
5 A. Let's see if I can remember how it transpired.
6 First of all, I'm going to try to remember the time
7 period. Christmastime was in there. The Monday
8 previous to Christmas, which was on Sunday, I had
9 returned Michelle Frostenson and Kelly Ek to -- off of
10 leave. Sharon Hammer was still on leave when I invited
11 Michelle and Kelly back.
12 And I sat both of them down and said, "Now
13 what you're going to have to do" -- "we've had lots of
14 turmoil here in the city. What I need you to do is to
15 be careful, you know, what you say and what you do so
16 that you smooth the transition back."
17 Michelle Frostenson and Kelly Ek spent that
18 week going around telling people, "Hammer's gone, we
19 won, you guys are next." Check with David Blampied,
20 check with Tammi Hall, check with Diane Shay, check
21 with -- who's another?
22 There was somebody else in there. There's
23 three, four, five witnesses -- staff people that can
24 testify, I think, that Michelle Frostenson and Kelly Ek
25 said that "You guys are finished." Okay?

Page 69

1 What I did was bring Sharon Hammer back off of
2 leave on the Tuesday after Christmas Day. Well,
3 Michelle Frostenson and Kelly Ek went nuts, because they
4 thought they had cooked her. And Sharon I gave the same
5 speech. I said, "Sharon, we're going to be very careful
6 about how we treat people."
7 And she said, "Yes, Mayor, I understand."
8 I says, "I think this now is behind us, and
9 I'm only going to be, you know, on board another week or
10 so, and so we'll have to have a stable staff." Okay?
11 Well, Michelle Frostenson's approach to that was,
12 without my approval, way the hell beyond her authority,
13 she placed Kelly Ek back on the signature block on
14 checks without discussing it. She just arbitrarily did
15 it.
16 I brought her into my office with Chief
17 Daggett and Sharon Hammer there, and I said, "Did you do
18 this? Did you put it without my approval?"
19 And she said, "Yes, and that's because you
20 don't know what you're doing, you don't know your job,
21 and you've been a jerk." Along those lines. You can
22 add, "along those lines."
23 And I said, "You take" -- "you leave your
24 keys, leave everything here, you go home. I'm going to
25 ask the council to fire you." And I wrote up a gross

Page 70

Page 72

1 insubordination, blah, blah. All of the right things.
2 And knowing that she had put all of this junk material
3 together beforehand, that was going to be part of the
4 reason for firing her.

5 I called for an executive session then -- and
6 what is that -- to discuss firing Michelle Frostenson,
7 and all of the council members bailed. They were not in
8 contact. They boycotted my meeting. So I didn't get a
9 chance to ask for her to be fired.

10 MR. NAYLOR: Object; foundation,
11 nonresponsive.

12 Q. (BY MR. SWARTZ) Did you communicate to the
13 council member by phone, by email, in person, about
14 wanting that --

15 A. When I brought everybody back off of leave, I
16 didn't see -- I saw no need to do that, no.

17 Q. Well, I'm talking about when you called for an
18 executive session and all of the council --

19 A. No. I just did the standard thing. Maybe
20 Sharon Hammer -- or Kelly would be the one who would
21 call for an executive session. You know, contact
22 council members and so forth. And they were all
23 incommunicado.

24 Q. Just nonresponsive?

25 A. Nonresponsive, yeah. Or I'm washing my hair

1 know, there were boxes of material that aren't here."

2 "Oh, what's that?" Boxes of different kinds
3 of material, including credit card receipts and so
4 forth, were at Michelle Frostenson's home in Rupert,
5 Idaho, which is really news to me. That was news.

6 Q. You didn't authorize her to remove original
7 documents from City Hall?

8 A. No. No.

9 Q. And you directed her to bring them back?

10 A. Yes. And I have -- I have no idea, to this
11 day, what is still missing and what was brought back
12 or -- remember, bam, bam. This is all unfolding bing,
13 bing, bing. If we had four months to do it, you know,
14 we could have, you know, really done it carefully. But
15 everybody's trying to do this in three days, and so
16 there's a lot of stuff that went by.

17 But this whole Michelle Frostenson having,
18 I'll say, sensitive -- because I think a credit card
19 receipt is a sensitive piece of material -- at her home
20 in Rupert Idaho, I mean, that's bizarre. Anyway.

21 Q. Did you ever provide Attorney Naylor with
22 original personnel files?

23 A. Provide?

24 Q. Yeah, give him original personnel files to
25 take with him off of City Hall premises?

Page 71

Page 73

1 or something.

2 Q. Did Kelly Ek report back to you that any
3 council member refused to go forward with the executive
4 session or it was just silence?

5 A. It wasn't -- a report that said, "Hey, I can't
6 get it together."

7 I said, "Okay. Fine."

8 Q. Did you communicate to Kelly Ek what the
9 executive session was going to be about?

10 A. No. I just said "personnel issues." Right,
11 personnel issues. But she, obviously, knew that
12 Michelle was home.

13 MR. NAYLOR: Objection; foundation.

14 Q. (BY MR. SWARTZ) Was there a period of time
15 where you ordered Michelle Frostenson to bring back a
16 bunch of original documents?

17 A. Remember context. Lots of things happening.
18 While Michelle was on leave, I -- Tammi Hall was
19 informed by the State of Idaho that we haven't -- hadn't
20 done, I'm going to say, I think, our FICA report -- or
21 it couldn't be state. That's federal. State would be
22 maybe the PERSI report. Some state report. Michelle
23 was like four months delinquent on that.

24 And so Tammi Hall had to get the material
25 together. And then all of a sudden Tammi says, "You

1 A. Now, here's your question: Did I go into the
2 files, pull personnel records out of the files and say,
3 Attorney Naylor, here are these personnel files? No.
4 Were different kinds of files in City Hall and in the --
5 and the fire station scooped up in an FBI-like raid by
6 Attorney Naylor and Attorney King? Yes.

7 Q. Did you authorize them to take those original
8 documents with them?

9 A. Did I get -- was I presented with a piece of
10 paper that said the following files are going to be
11 removed, would you please sign this? No.

12 Q. Were you asked for permission by Attorney
13 Naylor or Attorney King to take those documents?

14 A. It was more like, "We have authority to do
15 this, we're going in and getting them." And I thought
16 being a -- I'm an engineer, not an attorney. I got
17 swept up, got hustled, h-u-s-t-l-e-d.

18 Q. Earlier you spoke about involving Tammi Hall
19 in your own personal investigation into the allegations
20 being made against Sharon Hammer.

21 A. Uh-huh.

22 Q. What was the purpose of you conducting your
23 own investigation?

24 A. Remember the 133,000? That was like No. 1 on
25 my list. The rest of the stuff was, you know, down from

Page 74

Page 76

1 there. I said, "Tammi, this is serious. Because even
2 though everybody is on leave and everything, we've got
3 an audit coming up. We have to get this thing figured
4 out like right now."

5 She said "Okay."

6 I said, "Here's what to do. Take all staff
7 members, take all of their accrued vacation, dollarize
8 it, and add it up, see what it is." Okay? So she went
9 down 31 staff members, took Chief Daggett's, and she put
10 a nice report together that said, okay, Chief Daggett,
11 he gets to accrue, what, 200 hours. Chief Carnes gets
12 so forth.

13 But then what she did, she went down through
14 everyone's accrued vacation, and the overwhelming bulk
15 of all of the accrued vacation was okay. I mean, if
16 you -- on June 1st, your anniversary date, you get
17 80 hours of vacation. You have 80 hours of accrued
18 vacation right that instant. And if you dollarize that,
19 you know, times 20 bucks an hour, it's, you know, a
20 certain amount of money.

21 When we then took all of the appropriate
22 vacation approval out of the 133,000, I seem to remember
23 it was 10-, 12-, \$13,000. And I said, "Well, Tammi,
24 this is like a -- she -- this is like a bogus idea that
25 Sharon Hammer had been approving 133,000 bucks worth of

1 professional way, it would have been way slow, good
2 material, you know, Tammi Hall coming with her little
3 analysis and so forth. If that had been done properly,
4 we wouldn't be here today.

5 Q. I recall -- I can't find it right now -- but I
6 recall reading something about the reason that you
7 placed Sharon Hammer on leave was to protect her from
8 Nils Ribi's continued conduct toward her?

9 A. That's one element. What I decided was with
10 this, you know, kangaroo-court, witch-hunt approach, the
11 smartest thing for me to do to protect her -- she then
12 turning into a whistleblower -- she already was a
13 whistleblower, because we had -- I had a meeting earlier
14 in 2011 with Adam King and said, "Hey, what do I" --
15 "how do I get this thing stopped?"

16 I had no ability to fire Nils Ribi. He's an
17 elected official. I can't go anywhere and get him
18 canned. And I had no -- our city policies had no
19 ability to censure or discipline a council member. We
20 had nothing, nothing to work with.

21 And so here's Sharon vulnerable to this
22 activity. So I said, okay, smart thing is to put her on
23 administrative leave, because she's a whistleblower,
24 which the other team tried to unhook from my thinking
25 and say, "Well, no. No, she's not a whistleblower."

Page 75

Page 77

1 inappropriate vacation approval. It was bogus right
2 from the beginning.

3 Tammi Hall gave me her nice little report, and
4 off -- I said, "Okay." So this is all happening while
5 I'm suspicious of the whole process of what -- and so
6 we've got a get Sharon Hammer program started with all
7 of this.

8 And I'm slowly picking it apart with a proper
9 investigation, mine was, because I -- I don't know where
10 that report is now, but we could just lay that out in
11 front of you right now, and sure enough, when the
12 auditors finally got around to it, they saw that it was
13 pocket change of improper vacation accrual. It was like
14 nothing.

15 I don't know where I am now. What were we
16 talking about just before this started?

17 Q. Your independent investigation where you
18 involved Tammi Hall?

19 A. Then Tammi Hall got in contact with the BLM.
20 I think it was the BLM, because they're the ones that
21 managed the wildfire fighting thing. And she went down
22 in detail about charges, and they said, "No, all of the
23 charges are proper. Everything is fine."

24 That's when I knew that -- that this whole
25 thing was -- if this had been done in a really proper,

1 I said, "Yes, she is." If she's bringing
2 allegations against a council member for improper
3 conduct and everything, yeah, that's the pure definition
4 of whistleblower right there.

5 They say, "Well, Michelle Frostenson's a
6 whistleblower, but she isn't."

7 I said, "Well, that's nonsense."

8 Q. What do you mean that "the other team"? What
9 are you referring to?

10 A. Yeah, I keep on thinking about the anti, let's
11 get Sharon Hammer team. There's a whole list of names
12 on that, some of which are in the room right now.

13 Q. So of the folks who are in the room, you've
14 put Mr. -- Mayor Briscoe on that list?

15 A. Yeah.

16 Q. Mr. Ribi?

17 A. Yeah, absolutely.

18 Q. Mr. Naylor?

19 A. Yeah.

20 Q. Did I miss anybody in this room?

21 A. No. The rest of us are okay.

22 Q. Was there another element to putting her on
23 leave that we didn't cover?

24 A. No. What I -- no.

25 Q. Do you recall a period of time when

Page 78

1 Mr. Donoval was requesting that her leave not be
2 characterized as administrative leave, but be
3 characterized as working from home?
4 A. Remember the -- you may be referring to some
5 material that you have seen or know about. I don't.
6 Q. You've never heard of that request, that her
7 leave be characterized as working from home versus --
8 A. Heard about?
9 Q. Yeah. This is the first time you're hearing
10 it is today?
11 A. No, I've never read anything, because remember
12 the manila envelope story? So did I hear it?
13 Scuttlebutt? Yeah.
14 MR. NAYLOR: Object to the form, foundation.
15 THE WITNESS: Did I hear about it? Yes, I
16 absolutely heard about that idea, that concept, that
17 would really be good. I don't recall where I --
18 Q. (BY MR. SWARTZ) Did you --
19 A. Did I consider it?
20 Q. Yes.
21 A. No.
22 Q. Is there a reason why?
23 A. I thought -- yes. If you're going to be
24 evenhanded, Sharon Hammer's on leave, Michelle
25 Frostenson's on leave, Kelly Ek is on leave, the Carnes'

Page 79

1 family is on leave. Okay? So what we're going to do
2 is, okay, everybody is on leave because there's
3 allegations flying all over the place against Sharon
4 Hammer, Sharon Hammer against Nils Ribí, and so forth.
5 And so I'm thinking, okay, I can't have --
6 okay. Well, Sharon, you can -- because that's not the
7 definition of administrative leave. You're supposed to
8 leave everything in your office and everything. So it
9 really wasn't a consideration, to be quite honest with
10 you. Because there could be an impropriety there that
11 somebody, you know, might say, "Oh, okay. Well, I know
12 what's going on here."
13 Q. Did you ever consider putting her back into
14 active duty as an EMT or a firefighter while she was on
15 leave?
16 A. I did not, because that would have been that
17 same kind of thing. I wanted to pretty badly, but
18 didn't think I could, because that would mean that Nick
19 Carnes would be back on, you know, as an EMT, and some
20 other talk about, "Gee, well, maybe Michelle could do
21 some work at home."
22 "No. No. Whoa, whoa, whoa." All we want
23 Tammi Hall to do is to call -- talk to Michelle
24 Frostenson to get material to bring to the office, but
25 not do work. Otherwise, what does administrative leave

Page 80

1 mean? I mean, you know.
2 Q. Do you have any recollection of ever
3 authorizing Mr. Ribí to publicly disclose what was
4 transpiring in the November 11, November 14th executive
5 sessions?
6 A. Authorizing?
7 Q. Yes.
8 A. I had no ability to authorize or not authorize
9 him to do anything. That was his decision.
10 Q. He didn't check with you before publicly
11 disclosing what was transpiring in those executive
12 sessions?
13 A. No. That was just a violation of our council,
14 I'll say, methodology, because we had come to an
15 agreement early on that all of the executive session
16 deliberations would be confidential. If you think about
17 it for a moment, you go into executive session to
18 discuss confidential matters.
19 I mean, otherwise you just talk about it in an
20 open meeting, you know, like contract negotiations or,
21 you know, something along those lines. And so, yeah, it
22 was understood that it should be confidential.
23 Q. Did you ever -- do you recall asking Patti
24 Ball to reinterview Sharon Hammer and her decision not
25 to?

Page 81

1 A. I do not recall telling her to reinterview
2 Sharon Hammer, no.
3 Q. Do you recall any discussions about whether to
4 release the Patti Ball report to the Blaine County
5 Prosecutor's Office?
6 A. Did I authorize? This is another one of those
7 cases where I told Attorney Naylor, "Go right" -- you
8 know, "You're on your own. Go ahead. Take whatever you
9 want." You're -- because I was quite assured that that
10 would go nowhere.
11 That was a -- in my opinion, that was part of
12 the intimidation package that he was working with
13 threats. Boy, we're going to the attorney general,
14 we're going to the county prosecutor, we're going to fix
15 you.
16 Did he say that to me? No. Was it inferred
17 to me, being a 68 -- 71-year-old man and been around for
18 a while knowing what the game is? Yes.
19 Q. Do you ever recall -- or do you recall ever
20 telling Mr. Ribí that he should be seriously concerned
21 about the allegations that Ms. Hammer was making against
22 him?
23 MR. NAYLOR: Object to the form, foundation.
24 THE WITNESS: Let's see. The allegations --
25 prior to that first lawsuit, I was completely aware of

Page 82

1 the form of the allegations. In public meetings, in
2 comments that I made to Council Member Ribí in the hall,
3 and so forth, yeah, I'm totally aware of the
4 allegations.

5 When they popped up, I'll say, publicly, the
6 smart thing for me to do is shut up. Don't confront
7 Council Member Ribí, don't discuss anything with him
8 relative to that. So the simple answer to your question
9 is, no.

10 Q. (BY MR. SWARTZ) Other than communicating with
11 him about her complaints, you didn't express an opinion
12 whether he should be concerned or that the allegations
13 were trumped up or anything to that effect?

14 MR. NAYLOR: Object to the form, foundation.

15 THE WITNESS: No, because that took some time
16 to flow out. And so in the early meetings, I wasn't
17 100 percent sure that I knew what was going on until
18 after, you know, Tammi Hall and I got together and
19 everything. This took time. This didn't happen in
20 45 minutes. It happened over a period of time.

21 And so by the time I got to the point where I
22 knew that the allegations were bogus -- this was all in
23 the court system and everything. So I said the smart
24 thing for me to do is not have any conversation with
25 Ribí or Mayor-Elect Briscoe or anybody, or minimal.

Page 83

1 Q. (BY MR. SWARTZ) Do you recall Mr. Ribí asking
2 you to see a copy of the harassment policy that the City
3 of Sun Valley had and you asking Sharon Hammer to email
4 it to him?

5 A. Vaguely. Very vaguely. I kind of recall
6 something -- the word "harassment," yeah, somewhere
7 along the line. I have no idea when that might have
8 been. It was late in -- it was maybe 2011, not 2009.
9 So, yeah.

10 Q. So in that time frame, then, do you recall
11 Mr. Ribí expressing to you that he didn't believe that
12 his conduct violated the harassment policy?

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: I don't recall anything like
15 that. You mean like email, telephone, hallway?

16 Q. (BY MR. SWARTZ) Correct. Did he ever
17 communicate to you that he didn't think his conduct
18 violated the policy, and he wanted to see a copy of the
19 policy?

20 A. I don't recall that, no.

21 Q. Let me have you turn to Tab 6.

22 A. You know you're showing me stuff that's like
23 news to me?

24 Q. I can believe it. And some of this stuff I
25 realize that you've not seen before, and I'm just

Page 84

1 putting it in front of you to have some reference on
2 time --

3 A. Okay.

4 Q. -- as to certain events. And so we're now
5 looking at the November 17, 2011, meeting minutes. And
6 there was an executive session -- you'll see on page 2
7 an executive session was entered into. It doesn't state
8 why.

9 My question to you is: Do you recall what was
10 discussed in that executive session on the 17th?

11 A. Okay. I notice down here it says -- this is
12 the one where we reconvened at the Sage Room at the Sun
13 Valley Lodge. Boy -- okay. Because when you look at
14 what we did coming out of the public part of this, it
15 says, "Move to amend to include appointment of assistant
16 city clerk."

17 See, because Kelly Ek was on leave, and we
18 needed -- I think, from a statutory standpoint, you need
19 an appointed city clerk. I don't think you can just
20 say, "Hey, Joe, why don't you be the city clerk today."

21 So we appointed Diane Shay as the assistant
22 city clerk, and that was approved by the council, and
23 she was -- she started the city clerk assignment. Okay.
24 Now, what did we talk about in the executive session? I
25 don't recall. I don't know.

Page 85

1 Q. Okay.

2 A. Come to think of it, in those appointed
3 positions, I think city administrator, city clerk, and
4 treasurer, all have to be appointed and approved by the
5 council, but I may be wrong on that.

6 Q. It's been a while.

7 A. Yeah. Did I tell you I was an engineer, not a
8 lawyer?

9 Q. You did.

10 MR. NAYLOR: At Boeing.

11 COURT REPORTER: I'm sorry, what?

12 MR. NAYLOR: At Boeing.

13 THE WITNESS: Yeah, B-o-e-i-n-g. And put in
14 there I know about 737 airplanes, that's it.

15 Q. (BY MR. SWARTZ) Do you recall a period of
16 time when Mr. Donoval, on behalf of Ms. Hammer, was
17 making settlement offers, which included terms where
18 Mr. Ribí would resign as a city council person?

19 A. Now, I'm trying to remember if I learned about
20 that later or at the time. I think at the time I didn't
21 know about that. Now, you might ask me, well, how about
22 later? And help me -- ask the question, because I'm
23 trying to get clear in my mind, well, what do you
24 mean -- I don't recall at the time that all of that
25 activity was going on that there were settlement offers,

Page 86

1 because I had the impression that that wasn't -- that
2 sort of wasn't my business. Like I -- you know, it's in
3 the court system, lawyers are talking to each other, and
4 I had the impression that I wasn't engaged in that
5 negotiation. But later on I understood that there were
6 offers made of some kind.
7 Q. There was an executive session that was then
8 called on December 2nd, 2011. And you'll find that
9 under Tab 8. And based upon the first page of that
10 session -- of the minutes from that session, it was to
11 discuss an employee issue.
12 Do you have any recollection of what employee
13 or which employees were discussed on December 2nd?
14 A. You're really losing me now. I -- to be --
15 I'm under oath; right?
16 Q. Oh, yes.
17 A. Yeah. I have no idea. I have no idea what we
18 talked about. I don't even know where it was. I guess
19 it was in the council chambers, and don't know. Did
20 they say who was present?
21 Q. It looks like yourself --
22 A. The council. How come --
23 Q. -- and the full council.
24 A. But how come -- see, in a lot of these
25 meetings, City Attorney King was there, so why isn't his

Page 87

1 name down there in the people present or others that
2 might have been there?
3 Q. Do you recall others being present for any of
4 the executive sessions?
5 A. Well, I'm going to suggest to you that I think
6 on 100 percent of the executive sessions, Adam King, the
7 city attorney, was there. I think. I may be wrong by
8 one, but it's like all of them. And I think I recall
9 Attorney Naylor being in some of them, maybe even once
10 by telephone. So how come that wasn't in here?
11 Q. That's a good question. I can't answer that
12 one for you. We'll ask Mayor Briscoe tomorrow.
13 A. What are you here for if you can't answer that
14 question? No, okay, I'm supposed to answer, you're
15 supposed to ask. Okay.
16 MR. SWARTZ: Why don't we go ahead and take a
17 quick break.
18 THE WITNESS: I thought you'd never ask.
19 MR. SWARTZ: And we'll go ahead and assess our
20 next moves here.
21 (Break taken.)
22 EXAMINATION
23 QUESTIONS BY MR. NAYLOR:
24 Q. Mr. Willich, we need no introduction. I'm
25 going to kind of jump around, just to fill in some of

Page 88

1 the things where Mr. Swartz may have already asked you.
2 MR. NAYLOR: Sorry. Hang on.
3 (Discussion held off the record.)
4 Q. (BY MR. NAYLOR) Mr. Willich, do you remember
5 talking about getting those personnel files?
6 A. Attorney Naylor, it's a trivial little thing,
7 would you refer to me as Mayor Willich?
8 Q. Well, are you still the mayor?
9 A. No, but when you get elected mayor, you hold
10 the title like forever.
11 Q. Well, I may switch in between. No offense is
12 intended.
13 A. I'll be okay with that.
14 Q. All right. Do you remember going to Sharon
15 Hammer's office with Mr. Briscoe and Mr. King and myself
16 and using a key to unlock the filing cabinet to get
17 personnel files out?
18 A. Let me think about that. Going to her
19 office -- I know the filing cabinets you're talking
20 about, and I know the -- tell me again who you think it
21 was, you, Mayor-Elect Briscoe, and I?
22 Q. Yes. And I think maybe Adam King.
23 A. Adam King?
24 Q. Let me back up and just make it easy. Did you
25 have a key to that filing cabinet that was locked in

Page 89

1 Sharon Hammer's office?
2 A. Yes, I did.
3 Q. So you had to unlock that to be able to
4 retrieve personnel files; correct?
5 A. Right.
6 Q. And wasn't there personnel files --
7 A. You're going to have to slow down just a
8 little bit. It takes me a little bit of time. I'm
9 going to be thinking about, where was the key? The key
10 was in my desk. And I think I recall it that way.
11 Q. Do you recall discovering that someone's
12 personnel file wasn't there when you looked for it?
13 A. I don't recall that.
14 Q. And you testified --
15 A. I can't say no, no, it wasn't that way. I
16 just, I don't recall.
17 Q. If you don't recall, that's fine.
18 A. Yeah.
19 Q. You testified earlier that Tammi Hall put a
20 nice report together on vacation leave.
21 What did you do with that report?
22 A. Do with it? I held it in a folder somewhere,
23 and I think after leaving office I have it in a box
24 somewhere. I think I can reproduce it.
25 Q. You think you still have it?

Page 90

1 A. I believe I do.
2 Q. Oh, would you mind providing that to us?
3 A. I could easily do that, I think.
4 Q. Okay. And I'll share it with Mr. Swartz.
5 A. Well, in my case digging through boxes -- easy
6 is three days, five days, but I think I can reproduce
7 it, yeah.
8 Q. Did you ever turn that over to the city
9 council, that written report?
10 A. You just used the phrase "turn over," and I
11 will say no.
12 Q. Did you share it with them?
13 A. Share it like in a meeting like in executive
14 session or something?
15 Q. Yeah.
16 A. No, not that I recall.
17 Q. Did you ever share it with Patti Ball?
18 A. No, I did not.
19 Q. Did you share it with Scott Birch?
20 A. Scott Birch is from the attorney general's
21 office.
22 Q. Yes.
23 A. Yes.
24 Q. You gave him a copy or did you just tell him
25 about it?

Page 91

1 A. Told him about it.
2 Q. But you didn't show him the report?
3 A. I think vaguely -- can we have a one-to-ten
4 scale of assurance where ten is bulletproof? Yeah, I
5 think I might have said, "Well, look, see, here's
6 what" -- "let me show you, you know, what this accrual
7 really means and everything," and then put it out. That
8 could have happened.
9 Q. But you don't recall specific --
10 A. I don't recall exactly -- and said "Here's a
11 copy -- I don't recall turning a copy over to him."
12 Q. Did you meet with the forensic auditors?
13 A. Yes, for a day.
14 Q. Did you share with them this Tammi Hall
15 calculation?
16 A. Yes.
17 Q. Did you give them a copy of --
18 A. I believe they took a copy.
19 Q. When Michelle Frostenson came in on
20 November 11th, 2011, and reported her report to the city
21 council, did you consider her, at that time, to be a
22 whistleblower?
23 A. In the pure definition of it, yeah. I mean,
24 she had allegations to bring forward relative to
25 somebody she worked for, so that's the definition of a

Page 92

1 whistleblower.
2 Q. Was one of the reasons that you put her on
3 paid leave was so that she would not be subjected to
4 Sharon Hammer or other employees' retribution because of
5 whistleblowing?
6 A. No. The reason for putting her on leave --
7 once again, whistleblower -- is to remove her from all
8 of the circumstances and to -- so that we could get our
9 work done relative to the allegations without her being
10 there.
11 Because the idea that if she was there in the
12 office, then the investigation and any discussions we
13 might be having would look like it's tainted, because,
14 well, she's hanging around the office, you know, hand --
15 you know, being engaged in activity. So if she's at
16 home, there's no question of impropriety that she's
17 around the office, in my mind.
18 Q. There were no allegations at that time, in
19 your mind, that Michelle Frostenson had done anything
20 wrong, was there?
21 A. When she was put on leave? Not right at that
22 time, no. Very early.
23 Q. What do you mean "very early"?
24 A. Well, this all -- I'm trying to remember the
25 November 11th meeting, and I'm trying to remember the

Page 93

1 exact day, which I don't recall, that she was placed on
2 leave. But very early is within that short time period.
3 Q. Okay. And until the time that you testified
4 to earlier, on, I believe it was, December 29th, when
5 you wanted to terminate Michelle Frostenson --
6 A. Yeah.
7 Q. -- prior to that, had she, in your estimation,
8 done anything wrong?
9 A. Yes. I was convinced that she improperly,
10 inappropriately packaged material that formed the basis
11 for her allegations on November 11th, and -- but
12 subsequent to that, when I -- Tammi Hall and I did our
13 own little bookwork on this, I'm finding out that
14 Michelle Frostenson, on any number of issues, had
15 just -- what is the word -- misled the council. I'm
16 going to say lied.
17 And so, yes, I thought she had done any number
18 of things that were improper. And, in fact, if she
19 hadn't done what she did -- that insubordination action
20 of putting Kelly Ek on the signature block, totally,
21 totally inappropriate, way outside of her authority.
22 She thought she was bulletproof. And I said "Good, this
23 is the culmination of all of her improprieties, and now
24 she finally put the nail in the coffin."
25 Q. I'm going to hand you a document that's been

Page 94

Page 96

1 previously marked here as Exhibit 25, so we don't need
2 to mark it.

3 A. Yeah.

4 Q. It's dated December 28th, but it references
5 events on December 29th, 2011. Is this the notice of
6 suspension without pay and recommendation of termination
7 of Michelle Frostenson you're talking about?

8 A. Yeah, that's the one.

9 Q. Okay. And other than the allegation that she
10 changed the signature block on the checks to Kelly Ek,
11 is there anything in here about her lying, misleading
12 the council, fabricating any evidence or information
13 that she presented?

14 Go ahead and take your time and look at it.

15 A. Not in this.

16 Q. Okay.

17 A. I recognize this. Not in this.

18 Q. So when you say it was the culmination of all
19 that --

20 A. Right.

21 Q. -- you did not put that in this notice?

22 A. No. I was prepared to lay that all out at the
23 executive session that I was calling, relative to her
24 termination, and I was going to build that whole case to
25 the council with this other material, and then

1 Sharon, basically, drafted it. Sharon was her immediate
2 supervisor at the time.

3 Q. Did anyone else review it prior to you serving
4 it on Michelle Frostenson, other than you and Sharon
5 Hammer?

6 A. No, not that I -- unless Sharon reviewed it
7 with somebody. No, I don't know.

8 Q. And what do you mean by, As an employee of the
9 City of Sun Valley you do not have the authority to
10 determine where you will work"?

11 You go on to say, [as read] "Your regular
12 schedule is to be in City Hall on Tuesdays and
13 Thursdays."

14 But you have --

15 A. Right.

16 Q. -- you recognize that she worked Monday,
17 Wednesday, and Friday from her home; correct?

18 A. Yes.

19 Q. And that was approved, wasn't it?

20 A. Pardon me?

21 Q. That was approved, wasn't it?

22 A. Not by me.

23 Q. Well, while you were mayor, did you object to
24 her working from home?

25 A. No. This work schedule was approved and set

Page 95

Page 97

1 culminating in this.

2 Q. Why did you put, in writing, then, the reasons
3 for your suspension without pay and recommendation of
4 termination?

5 Why did you give this to Michelle Frostenson?

6 A. This -- what do you mean?

7 Q. Well, wasn't this to notify Michelle of what
8 wrongdoing you believed she did?

9 A. Right.

10 Q. But you didn't --

11 A. This particular incident, correct.

12 Q. And when we're talking about changing the
13 checks, this isn't changing the signature cards down at
14 the bank as to who is authorized to sign a check, this
15 is just the preprinted signature that shows up as one
16 signature on each check; is that correct?

17 A. There are two elements: One is the authorized
18 signature list at the bank --

19 Q. Correct. And that's not this.

20 A. That's not this. This is the -- yeah, the
21 signature at the bottom of the -- of the check. The
22 preprinted, you know, electronic signature.

23 Q. Okay. Who drafted Exhibit 25, this document?

24 A. Sharon Hammer drafted it with my, you know,
25 commentary, and then changed a couple of things. And

1 up by the previous city administrator back in '07. That
2 was Virginia Egger. And Mayor Thorson did -- set up
3 this program.

4 Q. And during the nearly four years that you were
5 the mayor, you took no action to change it?

6 A. Did not, you're right.

7 Q. So you agreed with it?

8 A. Right. I accepted it.

9 Q. Did Sharon Hammer recommend this suspension
10 without pay recommendation?

11 A. That was my idea. I said, "I want her" -- in
12 fact, that instant when I said, "You leave your" -- "you
13 leave all of your keys and everything here, leave the
14 building, and I need everything returned" -- "you know,
15 whatever you have at home, I need everything returned."
16 And that was then.

17 I wanted her off the property, summarily
18 dismissed. And then I would go ask the city council to
19 back me up on that, which, of course, the council could
20 have reversed and said, you're out of your mind, we're
21 not doing this, and everything, but they chose not to.

22 Q. Now, the day that this occurred, you had
23 testified that you were -- you called her in to your
24 office, Cam Daggett and Sharon Hammer were also present?

25 A. Right.

Page 98

1 Q. Why did you have Chief Daggett there?
2 A. I needed her direct supervisor there.
3 Q. That's Sharon Hammer?
4 A. Sharon Hammer and a credible witness.
5 Q. The chief of police?
6 A. Right.
7 Q. And that was the only reason you called him
8 in?
9 A. Yeah. Anybody else who would have walked by,
10 and somebody in authority -- if the chief wasn't there,
11 I could have brought in Mike Crawford, the assistant
12 chief, or something like that. But, anyway, a credible
13 person to observe what was going on.
14 Q. And you believed Chief Daggett to be credible?
15 A. Totally.
16 Q. And are you aware that he wrote out a written
17 statement detailing what he observed on December 29th?
18 A. Haven't seen it.
19 Q. You've never seen it?
20 A. I have no idea.
21 Q. Now, is it your recollection that the comments
22 that you testified Michelle Frostenson made that were
23 derogatory toward you about -- and I think they're
24 reflected in here about -- maybe they aren't.
25 A. Okay. Here it is. See Conclusion No. 2?

Page 99

1 Q. Yeah. Where does it say what she said?
2 A. "Your accusations" -- misspelled "you" -- your
3 accusations against me that this 'mess is entirely my
4 fault because I have not done my job.'" And so I --
5 that's what I remember her saying.
6 Q. Do you remember Cam Daggett being present when
7 she said that?
8 A. Yeah.
9 Q. And do you remember, as you sit here today,
10 that all of this occurred in one meeting where Cam
11 Daggett, Sharon Hammer, and Michelle Frostenson, and
12 you, were present in your office?
13 A. Yes.
14 Q. Is it possible --
15 A. It took about four minutes, maybe less.
16 Q. So you don't recall Michelle Frostenson
17 leaving and then coming back and talking to you alone in
18 your office?
19 A. What? I ran her off the property, no.
20 Q. And Cam Daggett was there when all of this was
21 said?
22 A. Yes.
23 Q. That's your testimony?
24 A. Yes.
25 Q. And you're certain of that?

Page 100

1 A. You want a one-to-ten scale?
2 Q. Yeah.
3 A. We're at about an eight and a half or a nine.
4 Q. And you are under oath today. You're
5 testifying under oath; correct?
6 A. Uh-huh.
7 Q. Yes?
8 A. Yes.
9 Q. For the court reporter.
10 A. Yes. Yes.
11 Q. And you testified in January 2011 in a court
12 hearing under oath; correct?
13 A. Yes.
14 Q. And you have filed -- or you have signed
15 affidavits -- I can't remember how many -- four or five
16 affidavits in this litigation; correct?
17 A. Right.
18 Q. And all of those were sworn under oath by you;
19 correct?
20 A. Correct.
21 Q. And were those true at the time that you
22 drafted and signed those?
23 A. To the best of my knowledge, yeah. Otherwise,
24 I would not have signed them.
25 Q. And who drafted those?

Page 101

1 A. Affidavits? I have had some affidavits
2 prepared by Jim Donoval that I have reviewed, corrected,
3 modified, whatever, and then have signed.
4 Q. Prior to coming in today, had you met with
5 Mr. Swartz?
6 A. Two years ago. Shook hands and said hello.
7 Q. That was it?
8 A. Yeah.
9 Q. Have you ever sat down for a meeting to talk
10 to Mr. Swartz about the details or facts of this case?
11 A. No.
12 THE WITNESS: To be quite honest with you, you
13 waved to me this morning, and I didn't know who you
14 were.
15 MR. SWARTZ: No offense.
16 MR. NAYLOR: Are you sure it wasn't me?
17 THE WITNESS: I recognize you. I recognized
18 Mayor Briscoe going by.
19 Q. (BY MR. NAYLOR) And Joy Vega, his associate,
20 have you ever sat down and met with her and talked with
21 her --
22 A. No. The first time I met her was this
23 morning.
24 Q. So Jim Donoval has prepared these affidavits.
25 Are there any affidavits that you've signed in

Page 102

1 the litigation involving Sharon Hammer that did not
2 originate from Jim Donoval?
3 A. Affidavits? No.
4 Q. Has Jim Donoval ever been your lawyer who
5 represented you?
6 A. No.
7 Q. Has Jim Donoval, to your knowledge, ever
8 represented the City of Sun Valley?
9 A. Not that I know of, no.
10 Q. To your knowledge, has Jim Donoval ever been
11 the attorney for Sharon Hammer in her capacity as the
12 city administrator for the City of Sun Valley?
13 A. No.
14 Q. When was the last time you talked with
15 Mr. Donoval, other than this phone call the other day to
16 make sure you were coming?
17 A. Maybe three weeks ago.
18 Q. And where was that?
19 A. Just a telephone conversation.
20 Q. When was the last time you had a face-to-face
21 meeting with Mr. Donoval?
22 A. Face to face? I think months ago.
23 Q. Do you remember where?
24 A. Oh, boy. A restaurant in Boise, because I'm
25 trying to remember -- my wife had her knee surgery, and

Page 103

1 we had to come down to Boise to get that done, and --
2 yeah, it could have been -- a couple months ago, I
3 think.
4 Q. Was it social or did you talk about this case?
5 A. Social.
6 Q. Did you talk about the details of any of
7 Sharon Hammer's cases?
8 A. No. I don't think that's too smart, to be
9 quite honest with you, about -- it's like, you know,
10 earlier today -- you know, all of this litigation was
11 going on during that time period, you asked -- somebody
12 asked me, did I talk to Council Member Ribi? No, not
13 really. You know, going to go to the meetings and
14 everything. Mayor Briscoe? Not really, because I just
15 didn't think it's smart to be having detailed
16 discussions about stuff.
17 Q. Was Sharon Hammer at this meeting -- or at
18 this dinner?
19 A. Yes.
20 Q. And so this was just a social event?
21 A. Yep.
22 Q. Approximately how many times have you talked
23 to Mr. Donoval on the phone about the litigation?
24 A. You mean about his affidavits?
25 Q. Yes.

Page 104

1 A. How many total are there, like four? Three?
2 Q. How ever many there are.
3 A. Three. I think three. I would say half a
4 dozen times.
5 Q. So when he wanted to -- when he sought you out
6 to get an affidavit, would he send you a draft of what
7 he needed in the affidavit?
8 A. Email.
9 Q. But the draft originated with Mr. Donoval;
10 correct?
11 A. Yeah.
12 Q. And then you would work it over and correct it
13 and send it back for him?
14 A. Yeah. The reason is he thought -- I don't
15 know about what he thought. If I were approached by
16 you -- you know, Kirt, you and I have had issues, but if
17 you came to me and you thought I had material -- in
18 fact, you're doing it right now -- that would be helpful
19 to you, and you would want to put an affidavit together
20 in some form, and I would look at it and say, "No, I
21 can't agree with that, I didn't do that"; or, "Yes, I
22 do," blah, blah. I would have accorded you the same,
23 I'll say, professional courtesy that I did to Jim
24 Donoval.
25 And if some other random attorney called me

Page 105

1 one day and said, "You have, you know, something I think
2 that might be useful to me," if it's truthful, I'd say,
3 "Yeah, I can sign that." If it's not, I'd just cross it
4 out and say "No, I'm not going to do it."
5 Q. In those early lawsuits, in November,
6 December, January of 2011 and '12, who was the attorney
7 for the City, representing the city in those lawsuits?
8 A. Lawsuits attorney? We have somebody called
9 the "city attorney." So I'm not even quite sure what
10 the role of the city attorney is. It's kind of a fuzzy
11 thing that he -- the city attorney represents the city.
12 Okay. Well, a city is a corporation, and I'm not even
13 quite sure that -- what that all means.
14 Q. Well, let me ask it this way, it might make it
15 easier: Who attended the court hearings on behalf of
16 the city at those trials -- or those hearings?
17 A. I was going to follow up with the answer, you
18 know, the city attorney, Adam King. But, now, as soon
19 as the lawsuits started flying around and the ICRMP
20 insurance company -- and I continue to refer to it as an
21 insurance company, because that's what I think it is,
22 liability insurance company -- that I think they engaged
23 you to represent them in this action relative to the
24 city. So I think the attorney that was assigned by the
25 insurance company was Kirt Naylor.

Page 106

Page 108

1 Q. For the city that was being sued? I mean
2 ICRMP wasn't --

3 A. Yes. All right. But there are individuals in
4 the city. The corporation wasn't being sued. There
5 were individuals named in the suit. They were --

6 Q. So was the City of Sun Valley?

7 A. Yeah, and the individuals.

8 Q. Now, these other people that you've testified
9 today that you gave permission to take city vehicles
10 home, did you indicate to each of them that they had
11 authority to use those city vehicles for personal use?

12 A. Yes. I can give you an example. When I
13 authorized Brad Mitchell to take the plow home all of
14 the way to Hailey, Idaho, 15 miles away, if he used that
15 vehicle to drive over and pick up kids from school, to
16 go over to Albertson's and buy groceries, and maybe go
17 down to Bellevue to see if his other car's mechanical
18 work had been done, blah, blah, blah, yes.

19 Q. That would be acceptable to you?

20 A. Perfectly.

21 Q. Do you know if that's in violation of the city
22 policy?

23 A. I have no idea.

24 Q. Did you review or refer to the city policy
25 about the use of city vehicles for personal use prior to

1 parked out there, so why don't you use that."

2 Q. And in that situation, did you review the
3 policy manual to see if you had the authority to provide
4 her that car for personal use?

5 We just have to get this on the record.

6 A. I know. I was told -- I was told, a long time
7 ago with some attorneys at Boeing, don't use smart
8 remarks, you know, in your answer, because it doesn't go
9 well. And my smart remark is, one more time, I'm an
10 engineer not a lawyer.

11 Did I pore through city policy manuals to
12 figure out everything that I was doing over four years?
13 No. Did I have a feeling of a certain level of
14 authority -- because I made the example before, it was
15 time to buy a \$30,000 bush truck.

16 I just knew, inherently, I didn't have to look
17 at the policy -- the city policy to say, hey, I think I
18 better take this to the city council, I'm not going to
19 write a \$30,000 check on my own.

20 Q. So did you tell Sharon that she could use the
21 car at any time as much as she wanted for personal use?

22 A. Did I specifically sit her down in a meeting,
23 a formal meeting, and say, "Sharon, this is what I
24 understand"? No, I didn't do that. We just understood.
25 See, I had written that thing off in my mind a long time

Page 107

Page 109

1 giving any of these individuals permission?

2 A. No, because I thought it was in -- within my
3 authority to do, you know, the right thing for the city.

4 Q. So it didn't have anything to do with any side
5 agreement or contract, it was your inherent authority as
6 the mayor to be able to give these cars for personal
7 use?

8 A. You mean, did I sign a contract with Brad
9 Mitchell to say, "I need you to sign this before you
10 leave this afternoon with the vehicle"?

11 Q. No, what I'm saying --

12 A. What's the nature of the question?

13 Q. What I'm saying is: There was no side
14 agreement with Brad that he would get a city vehicle
15 while he was employed, it was simply you were providing
16 him this benefit pursuant to your inherent power as the
17 mayor?

18 A. Yes. There was no written agreement with Brad
19 Mitchell to use the plow to go to Hailey, right.

20 Q. And when did you talk to Sharon Hammer about
21 first using a city vehicle?

22 A. Right after she was hired and came on and we
23 had that surplus vehicle. They only had one car, and
24 her husband, Jim, wasn't due to arrive for a while, and
25 I said, "Hey, we've got the" -- "we've got that thing

1 ago.

2 It would be like that printer that I talked to
3 you about. I didn't have a big long discussion with
4 anybody. I didn't look in the city's policies on
5 whether or not I could get rid of a printer -- you know,
6 an \$800 printer, surplus it, because it wasn't working
7 or anything. I just did it, because it was within
8 normal bounds of running the business.

9 Q. Did you treat this -- well, back up. Did you
10 consult with anyone to determine whether this use of the
11 city vehicle for personal use was a fringe benefit that
12 needed to be considered for tax purposes by anybody?

13 A. Didn't think about it at all, no.

14 Q. Were there any limitations placed on her use
15 of the vehicle?

16 A. None that I know of.

17 Q. So would you agree that if she wanted to drive
18 to Fairfield on personal business, that that would be
19 acceptable?

20 A. Yeah.

21 Q. What about if she wanted to go to New Mexico
22 for a two-week vacation, would that be acceptable?

23 A. With that vehicle?

24 Q. Yeah.

25 A. No. I think that would -- no, that wouldn't

Page 110

Page 112

1 be -- I would think that that would be a little far
2 afield.

3 Q. What about driving to Boise for totally
4 personal reasons using that vehicle?

5 A. Yeah.

6 Q. That would be okay?

7 A. Yeah.

8 Q. Did you ever set any parameters with
9 Ms. Hammer about, you can use it for personal reasons
10 from here to Fairfield or here to Boise, but don't go
11 500 miles?

12 A. No. But you need context for my answers.
13 Okay? So I'm going to give you context. Here's a woman
14 that passed on her contracted bonus payment that she was
15 due, and she just skipped the bonus payment and spread
16 it around among the other staff members so that they
17 could get a cost of living increase.

18 And so, okay, I'm looking, here's the -- and,
19 once again, I have a corporate background, and she was
20 the senior executive in our little corporation. And if
21 I look at -- if I look at, okay, she's senior executive
22 in the corporation, she's in all hours of the day and
23 night, sometimes on Saturdays -- I'd have to send her
24 home. I'd drive by after dinner and see her car out
25 there and say, "Hey, what are you doing here working at

1 vehicle for her personal use?

2 Do you want me to reread that?

3 A. No. No. I don't need you to do it. I'm just
4 wondering what kind of notes former Council Member Ribi
5 was taking? What are we doing?

6 Q. Let me ask you the question again. So you
7 never authorized her, Sharon Hammer, to use the Sun
8 Valley credit card to put gas in that vehicle for her
9 personal use, did you?

10 A. My understanding was that Sharon Hammer was
11 purchasing fuel for that vehicle with her own credit
12 card.

13 Q. So if that was your understanding -- and I
14 just need you to answer that question that I've asked --
15 did you ever authorize her to use a city credit card to
16 put gas in that vehicle for personal use?

17 A. That's a clever way of asking a question, but,
18 of course, that's your job, isn't it?

19 See, the inference in your question is that --
20 you've already prejudged it to the point where you
21 already know she inappropriately used the credit card
22 for personal use without my authorization. That's the
23 way you've framed the question.

24 Q. No, I'm just trying --

25 A. And I'm going to answer your question. That's

Page 111

Page 113

1 8:00 o'clock at night?"

2 "Well, I had to get this material." So I, in
3 context of what she was performing from a work
4 standpoint for the City of Sun Valley, knowing that she
5 passed on bonus payments for the City of Sun Valley, and
6 here's this little scrap value rig that is of very
7 little value to the city, I weighed those things, and
8 said "Yeah, go ahead." Did I say specifically, "Yeah,
9 go ahead"? No, I just...

10 Q. What do you mean, did you say specifically "go
11 ahead"? Go ahead what?

12 A. I did not specifically sit her down and say,
13 this is what I understand about this and lay out a whole
14 -- what I just did for you. I never had this long
15 discussion that I just had with you with her. It didn't
16 happen that way.

17 Q. What about the city credit card, did you
18 authorize her to use that Sun Valley-issued credit card
19 to put gas in the Sun Valley-owned auto for all uses,
20 including her personal use?

21 A. I was under the assumption, and I believe
22 if -- that it's been established that she paid for her
23 own gas money for her personal.

24 Q. So the answer is no you never authorized her
25 to use a Sun Valley credit card to put gas in that

1 what I have going in my mind. And the answer that I
2 have, in my mind, did I ever specifically, in writing,
3 email, telephone conversation, or whatever, tell Sharon
4 Hammer, "Sharon Hammer, you're authorized anytime,
5 anywhere, anyplace, any distance, to use a city credit
6 card to put fuel in that vehicle for any use
7 whatsoever"? No, I never did that.

8 Q. And what Ms. Hammer alleges is -- just so
9 we're clear -- she alleges that you authorized her to
10 use a Sun Valley-issued credit card to put gas in a Sun
11 Valley-owned auto for all uses, whether they be Sun
12 Valley related or personal in nature. That infers that
13 you affirmatively authorized her to do that.

14 MR. SWARTZ: Objection; incomplete
15 hypothetical.

16 THE WITNESS: I have no idea what you're
17 talking about.

18 MR. NAYLOR: Let me just ask you --

19 THE WITNESS: Well, there's a piece of paper
20 you're reading off of that has some kind of discussion
21 about what Sharon Hammer said. She's not here, so I
22 don't know.

23 Q. (BY MR. NAYLOR) I just need to ask you this
24 question: Did you ever authorize Ms. Hammer to use a
25 Sun Valley-issued credit card to put gas in a Sun

Page 114

1 Valley-owned auto for all uses, whether they be Sun
2 Valley related or personal in nature?
3 MR. SWARTZ: Objection; asked and answered.
4 THE WITNESS: Would you go back to my original
5 answer? I'm just going to --
6 COURT REPORTER: Okay. Wait. Hold on a
7 second.
8 MR. SWARTZ: Objection; asked and answered.
9 COURT REPORTER: Okay. Now go ahead.
10 THE WITNESS: Will you go back to my original
11 answer, and that remains my answer, that great big long
12 discussion. And I'm not going to answer that question.
13 I think I've answered his question already.
14 Q. (BY MR. NAYLOR) Okay. Mr. Willich -- Mayor
15 Willich?
16 A. Yes, thank you.
17 Q. You haven't -- you've told me that you had
18 never -- I'm going back to your answer. It says, "And
19 the answer that I have in my mind, did I ever
20 specifically in writing, email, telephone conversation,
21 or whatever, tell Sharon Hammer, 'Sharon Hammer, you're
22 authorized anytime, anywhere, anyplace, any distance, to
23 use the city credit card to put fuel in that vehicle for
24 any use whatsoever'? No, I never did that."
25 Is there anything you want to add to that?

Page 115

1 A. Yes.
2 Q. What?
3 A. See, that's the detailed, formal, answer to
4 the question. You asked me a formal question: "Did you
5 write something? Did you have a discussion? Did you
6 email? Whatever." The formal answer is "No." The
7 informal answer is "Sharon, go right ahead, use good
8 judgment."
9 Q. So you authorized her to use her judgment to
10 use the city-owned credit card for gas in that car for
11 personal use, and if she did that, you would not have a
12 problem with that; is that what you're testifying?
13 A. What I'm testifying to is we had a culture in
14 our city where people took on lots of personal
15 responsibility. In her particular case, she was given
16 wide, wide, wide latitude to use good judgment. And
17 that's the answer.
18 Q. Okay. I'm going to read you a statement that
19 she's made, and just tell me if you agree with it or
20 disagree. "During his term as mayor of Sun Valley,
21 former Mayor Willich orally confirmed to Ms. Hammer that
22 pursuant to his statutory powers as the mayor of Sun
23 Valley, and pursuant to the flexible benefit provision,
24 he possessed the authority to, among other things, allow
25 Ms. Hammer to use a Sun Valley-issued credit card to put

Page 116

1 gas in a Sun Valley-owned auto for all uses, whether
2 they be Sun Valley related or personal in nature."
3 Do you agree with that?
4 A. Referring back to the last part of the
5 answer -- or the last part of the question that I
6 answered is, yes, use good judgment.
7 Q. So if she used the city credit card for
8 personal use of gas, then you would not have any
9 objection to that?
10 A. You'll have to -- you have to go -- you're
11 going to have to give me way more details than just some
12 kind of remark like that. That's just a hearsay, casual
13 remark. I have no -- do you have any information that I
14 can look at it, or do you have something --
15 Q. I'm just asking you for the parameters of how
16 much -- if she used the credit card to buy gas to go to
17 New Mexico, would that be acceptable to you?
18 A. I don't know. We're -- you're going to have
19 to give me a lot more detailed understanding of what the
20 nature of your question is, because you're trying to
21 wind me around into a position of -- kind of like
22 setting up the circumstances where I disapproved of her,
23 but I don't know what the circumstances are.
24 If she had to drive to the hospital in -- very
25 quickly, and it's low on gas, and she goes and swipes

Page 117

1 the card, yeah, sure. You know, I don't know. Tell me
2 what the exact circumstances are.
3 Q. She drives to New Mexico for a two-week
4 vacation and uses the city credit card to pay for all of
5 that gas. Would that be, in your estimation, within the
6 authority you gave her?
7 MR. SWARTZ: Objection; incomplete
8 hypothetical.
9 THE WITNESS: Yeah. I --
10 Q. (BY MR. NAYLOR) You used that hypothetical,
11 didn't you?
12 A. Well, I suspect that she would have used good
13 judgment and not done that.
14 Q. What about her flextime, how did that work?
15 What did you tell her that she could do about
16 vacation, sick leave, flextime?
17 A. She was the senior executive in a corporation.
18 You have to, okay, remember I come from a corporate
19 background. In fact, I don't even understand what the
20 flextime -- people have used that terminology, and I'm
21 not even sure what it was.
22 Did I have a time card on Sharon Hammer? No,
23 she was not a time card employee. Did I have, oh, some
24 kind of specific 9:00 to 5:00 requirements for her? No.
25 Did she generally have to perform the duties of her

Page 118

1 position, and -- whether it was over holidays that she
2 worked, various times, nights, weekends, and so forth.

3 What I did was observed her general demeanor,
4 in terms of is she there, is she punctual performing, is
5 she coming in early, staying late, et cetera, et cetera,
6 et cetera, and gave her, once again, wide latitude for
7 her judgment on use of her time. Did I think she
8 performed, over three-and-a-half years, completely
9 fulfilling the on-time requirements? Yes.

10 Q. So would you require her to keep track of how
11 many hours she worked late and then give her so many
12 hours off on a Friday or something like that, or would
13 you just leave it up to her judgment?

14 A. Did I say, "Hey, were you here on Saturday for
15 four hours?"

16 "Yes."

17 "Okay. Sharon, let's mark this down four
18 hours. Now, then, on Wednesday you'd like to go home
19 early? Okay. I think you can go home early for four
20 hours because you worked on Saturday."

21 None of that happened. That did not happen.
22 She's not a -- with a time card, no. Did we use
23 judgment about it? Did I observe her, a lot of times,
24 in the office at night, weekends, et cetera? Did I
25 allow a lot of latitude relative to going home -- in

Page 119

1 fact, I don't even recall a time of her saying -- coming
2 into the office and saying, "I won't be here this
3 afternoon because" -- it may be once or twice -- "of a
4 doctor's appointment" or something. But she was there
5 all of the time, and, in fact, overtime.

6 Q. What about if she wanted to take two weeks'
7 vacation, would you expect her to count her -- to charge
8 her vacation time against that time?

9 So in other words, if she took two weeks'
10 vacation -- she's earned vacation time; correct?

11 A. Sure, yeah. Everybody did.

12 Q. So when she took vacation, did you expect her
13 to use her vacation time for that time on vacation?

14 A. Yes. And when we did the little analysis of
15 accrued vacation time, as I recall -- I'd have to get
16 the little report out -- but I don't think she had very
17 much, if any, over-accrual. So, yeah.

18 Q. But if she left on Friday at noon, she didn't
19 check in with you, and you didn't need to authorize her
20 to leave early on Friday; is that what you're saying?
21 You just left it to her judgment?

22 A. Let's see, to answer your question, in
23 three-and-a-half years, did I ever walk down the hall
24 and say, "Where's Sharon?" I don't recall that ever
25 happening.

Page 120

1 Q. So you're saying she never took time off? She
2 was always there 8:00 to 5:00, other than on vacation?

3 A. Would you ask that one again?

4 Q. Yeah. You just said --

5 A. I'm trying to give you an answer that --

6 Q. You just said, did I ever go down the hall and
7 look and see Sharon was gone? No. So I'm asking you:
8 Does that mean that other than her being on vacation,
9 was she always there at least 8:00 to 5:00?

10 A. Let me answer it my way. You just
11 rephrased -- or reframed the answer, and I want to
12 reframe it back again. What I'm trying to suggest is I
13 wasn't -- in three-and-a-half years, I don't recall ever
14 being unaware of her absence. Now --

15 Q. "Unaware of her absence"?

16 A. Of her absence from the office. I don't
17 recall ever, once again, walking down the hall and
18 saying, "Hey, where's Sharon?" Never happened. I was
19 either aware of vacations, aware of, "Mayor, I'm going
20 over to" -- "I've got a doctor's appointment this
21 afternoon," et cetera, et cetera.

22 So I was never in a situation where, "Where in
23 the heck is she?" In fact, I was overly aware of her
24 being -- working in the office in City Hall way beyond
25 the number. I was more concerned about that than I was

Page 121

1 about any, like, absences. Okay.

2 Q. Was this practice allowed for other employees?
3 And I call it the flextime, because that's what
4 everybody else calls it. What would you call it?

5 A. Nobody ever walked in my office and said, "I'm
6 leaving early because of flextime."

7 Q. But if somebody else left early, would you be
8 concerned about that if they didn't tell you, Michelle
9 Frostenson is gone to --

10 A. Yes. Let me give you an example. Kelly Ek
11 was -- is a lot -- had a lot of health issues, lots.
12 And so I, shall we say, cut Kelly Ek a lot of slack for
13 doctor's appointments, et cetera, et cetera, because
14 of -- why is that -- just because of her health.

15 So we just made -- I think the whole staff
16 made adjustments, I'm going to say. Were there times
17 when I walked down the hall and said, "Well, where's
18 Kelly?" Yeah, quite a few times. How was I on
19 discipline relative to that? Pretty poor, actually, in
20 her case. That should have been resolved, you know,
21 sometime ago.

22 Other people? I don't know. Michelle
23 Frostenson? Remember, these are the appointed people.
24 These are the senior people in the organization. Did I
25 not know Terence, you know, in the street department --

Page 122

1 was I totally aware of all of his comings and goings?
2 No. The reason is he was working for Bill Whitesell,
3 the head of the street department. Was I aware of --
4 Q. So was it okay for anybody to take time off --
5 A. No.
6 Q. Okay.
7 A. No. I'm just trying to explain it to you.
8 Terence works in the street department, he works for
9 Bill Whitesell. Bill Whitesell was responsible for
10 keeping track of Terence's time, et cetera, et cetera.
11 Did I have a general policy that said that Terence could
12 just take time off anytime he wanted or anything? No.
13 Q. Was Terence an hourly employee?
14 A. He is -- let's see, was he hourly?
15 Q. I'm just talking about exempt employees that
16 don't punch a time clock.
17 A. Right.
18 Q. If they came and went, it was okay with you,
19 so long as they didn't abuse it?
20 A. The senior people, yeah.
21 Q. Now --
22 A. Three people in particular, Michelle, Kelly
23 Ek, and Sharon.
24 Q. Now, these two issues, Sharon's use of the
25 car, and gas purchased by the city, as well as the

Page 123

1 flextime time off and vacation time, those were two
2 issues that Sharon -- that Michelle Frostenson brought
3 up in that November 11th meeting, weren't they?
4 A. I'm going to say, yes, except that, you know,
5 the credit card thing, I don't recall that being a big
6 part of the November 11th meeting. There was a
7 reference to it, I think, but I don't recall that.
8 Q. At the November 11th meeting in executive
9 session, when these issues came up, did you, at that
10 time, tell the city council, "Oh, well, I gave Sharon
11 permission to use this vehicle"?
12 A. I had no discussion with the council on
13 anything. I listened the whole time and shut up.
14 Q. So wouldn't -- didn't --
15 A. I didn't defend anything or comment about
16 anything.
17 Q. But if you had given her permission, wouldn't
18 that have pretty much resolved it in your mind?
19 A. I have no idea. I did not discuss it with the
20 council, I didn't defend anything, nor did I comment on
21 anything.
22 Q. Why not? Why didn't you clarify that you had
23 already given her permission for that?
24 A. Remember what I said earlier? The council is
25 responsible for bringing issues to the council about

Page 124

1 employees relative to improprieties. I had no
2 inclination whatsoever, in a kangaroo court, to have a
3 discussion with this council. They had the bit in their
4 teeth, and they were on their way, and I shut up and did
5 not say anything.
6 Q. So as of November 11th, who was the chief
7 executive officer responsible for the supervision of all
8 employees?
9 A. Me.
10 Q. And you did not feel that it was -- would be
11 beneficial to impart on that information?
12 A. Not in that setting. I was going to -- I
13 wanted -- which ultimately happened, poorly -- a real
14 investigation into the allegations to start a -- to
15 start a discussion with council members that were
16 oriented a certain way.
17 I said, "Let them go, let them talk, let them
18 put their program together" -- come to think of it, I
19 did that with you, too, Mr. Naylor. "You just go right
20 ahead" --
21 Q. So on Monday, November 14th, when you met back
22 with the city council, isn't it true that at that point
23 you said that you had already -- that you had given
24 Sharon Hammer permission to use the car?
25 A. That's the meeting we decided to hire an

Page 125

1 investigator.
2 Q. But isn't it true that you told the city
3 council --
4 A. I don't recall it that way, no.
5 Q. You don't?
6 A. No.
7 Q. So you deny saying that or you just don't
8 recall as you sit here?
9 A. Don't recall. All I recall is we said we're
10 going to hire an investigator.
11 Q. And you don't recall telling the city council
12 on Monday, November 14th, about that you had authorized
13 flextime or this vacation time flexibility?
14 A. Don't recall that.
15 Q. Do you remember Bob Youngman saying to you, on
16 November 14th, something to the effect, "Well, that
17 would have been good to know, what you're just telling
18 us now, last Friday"?
19 A. I don't recall that.
20 Q. You just don't have a recollection?
21 A. Don't have a recollection. Because all I do
22 recall is that all I had in my mind was investigation.
23 Didn't want to have some kind of offline interaction
24 with council members and other people having a
25 discussion of issues that may have turned out to not be

Page 126

Page 128

1 right.

2 Q. Let's go back to the November 11th meeting
3 when you met with the council in executive session with
4 Michelle Frostenson.

5 At that point in time, you -- isn't it true
6 that you suggested that -- let me back up. Isn't it
7 true that city council members said, "Well, if these
8 allegations are true, then perhaps Sharon Hammer would
9 want to resign"?

10 A. As I recall, there was a bit of interchange
11 going on, the end result of which was this idea of
12 offering to -- offering Sharon Hammer to -- offering to
13 her to resign.

14 Q. Do you recall the city council suggesting
15 giving Sharon Hammer six months' severance, and you
16 responding, "I think I can sell three months"?

17 A. No. The discussion was six months. And as I
18 recall, Councilman Ribi insisted on three months.
19 "There's no reason for us to give her six months'
20 severance pay. Offer her three months."

21 Q. It's your recollection that that was Council
22 Member --

23 A. That's my recollection was it was Council
24 Member Ribi's recommendation.

25 Q. And did you then know at that point in time

1 could three council members walk into her office and
2 say, "You're fired"? No, I didn't think they could do
3 that.

4 Q. So you went ahead, even though you didn't
5 believe any of the allegations, you didn't -- and you
6 believed that this was all trumped up, a kangaroo court,
7 to use your term, you still went in and asked Sharon
8 Hammer to resign; correct?

9 A. Wait a second. I thought -- first of all, I
10 knew it was a kangaroo court. They bam, bam, bam. Here
11 we've got them and the state, we've got to get this
12 done. Joan Lamb is out of town, blah, blah. Okay? Two
13 days after the election. So I knew that part.

14 The idea about the allegations, didn't know.
15 Remember, I'm bringing you back to the 133,000 bucks.
16 That was in my mind. The car was nothing. That was
17 nothing. 133,000 bucks, cheating the BLM out of money,
18 those are problems. But I needed more discussion than
19 just somebody -- Michelle Frostenson coming in and
20 throwing some paper on the table and saying, "Okay.
21 You're out of here."

22 So I thought, okay, we need to really get to
23 the bottom of this. And it smells --

24 Q. Let me take you back --

25 A. -- Michelle Frostenson's discussion on

Page 127

Page 129

1 that she had a six-month severance in her contract?

2 A. Vaguely. Remember, this is going fast. Did I
3 review the contract and everything --

4 Q. No, did you have it in your mind that she had
5 a six-month severance?

6 A. I thought the six months was on a
7 termination -- not a termination. I mean -- yeah, the
8 six months was if she was dismissed without cause.
9 Those are the words I'm trying to remember. "Hey, we
10 don't like you, here's six months' money," and off you
11 go. Dismissed without a cause, that's what I thought
12 the deal was.

13 Q. And is it your testimony that you believed on
14 November 11th that the city council was empowered to
15 terminate Ms. Hammer, not you?

16 A. At that time I believed that the city council
17 was taking a no confidence vote kind of thing that says
18 that we intend for her to be out of here, because of
19 these allegations. And I -- remember, being an
20 appointed position, you have to have the permission of
21 the council to hire that person, and you have to have
22 the permission of the council to dismiss them.

23 So in one respect I was thinking, yeah, they
24 had some authority. I'm not even quite sure what that
25 was at the time, but, yeah. Could they walk into --

1 October 5th, that smells. The -- Ribi telling me the
2 day before we've got to hurry up and get this thing
3 done, there's only three of them there, that kind of
4 smelled. Everything smelled on this thing.

5 Q. Okay. Let me ask you this, though: On
6 November 11th, were you asking for an investigation to
7 be ordered?

8 A. No.

9 Q. Okay. So you went in to Sharon Hammer, and
10 you said, "If these allegations" -- even the BLM, in
11 your mind -- "if these allegations are true, perhaps it
12 would be better for you to resign"?

13 A. No.

14 Q. So you weren't --

15 A. "They want you to resign."

16 Q. That's what you told her?

17 A. Yes.

18 Q. And you -- but at that point, you weren't
19 looking for an investigation -- to hire an investigator,
20 you went in to ask her to resign if any of these matters
21 were true; correct?

22 A. I said, "They have these allegations about
23 you." And we only picked -- Adam King only picked a
24 couple of them.

25 Q. Do you remember which ones he picked?

Page 130

1 A. I don't know. What did he pick? He picked
2 the car. I don't recall the rest. I know it was the
3 car. And let's get this entirely clear, I was a --
4 carrying a message from the city council, and it's the
5 city council's intent.
6 And I said "They. They have brought these
7 allegations forward, they are suggesting you resigning,
8 and they're suggesting a three month severance."
9 Q. Then do you believe that the Birch report was
10 impartial?
11 A. Let me tell you about all of the reports,
12 relative to the value of the car, including the forensic
13 auditors. Never once, even though I had made it very
14 clear to all of those people that I had looked into the
15 trade-in value of that vehicle -- it was 1650 bucks.
16 Okay? Which is well below the \$5,000 limit for capital
17 assets that you kept -- you had to keep on the books.
18 And all of the reports never quoted me on the 1650
19 bucks.
20 Q. So was -- did you consider the Birch report to
21 be fair and impartial?
22 A. In a limited way.
23 Q. Did you consider the forensic audit to be
24 impartial?
25 A. Very, very limited.

Page 131

1 MR. NAYLOR: Off the record for just a second.
2 (Break taken.)
3 Q. (BY MR. NAYLOR) Now, you testified that you
4 believed that Nils Ribi was at the City Hall on
5 November 10th reviewing financial records?
6 A. I believe so, yeah.
7 Q. As you sit here today, do you recall that?
8 A. Yes.
9 Q. So you're sure that that -- that Mr. Ribi was
10 there at the City Hall on November 10th?
11 A. I'm quite sure, in the morning, before noon.
12 And you're going to say, okay, now some things you can't
13 remember, what's this -- all of a sudden you remember
14 these? Yes, because it was right after the election,
15 and I just lost. And -- December 10th -- or
16 November 10th.
17 And Councilman Ribi is in council chambers,
18 remember that, going over the invoices. And I go in
19 to -- you know, when any council member comes in, you
20 say pleasantries, "Hello. How are you?" And so forth.
21 And you've got the rest of that.
22 Q. Who hired Patti Ball?
23 A. I did.
24 Q. Had you interviewed other attorneys before
25 her?

Page 132

1 A. Why are you referring to her as an attorney?
2 Q. Well, I'm asking -- didn't you hire --
3 A. I didn't hire an attorney. I hired an
4 independent investigator.
5 Q. Well, who did you interview before Patti Ball?
6 A. It was one -- one woman they interviewed over
7 the phone, and she was a -- she was in the Boise office
8 for the Perkins Coie firm out of Seattle.
9 Q. Was she an attorney?
10 A. I don't know.
11 Q. And who else?
12 A. I'm sorry.
13 Q. Who else did you interview?
14 A. Let's get back to the lady that we interviewed
15 at Perkins Coie, and that was recommended to us.
16 Q. That's okay. I don't need all of those --
17 A. Their firm was recommended by Joan Lamb, but
18 go ahead.
19 Q. And then you interviewed somebody else?
20 A. No. I think we just interviewed those two
21 people.
22 Q. And why did you settle on Patti Ball?
23 A. It seemed -- in retrospect now, it seemed that
24 the woman out of Boise was, you know, representing a
25 firm that was a Seattle firm, and it seemed a little

Page 133

1 remote. Like, well, maybe she wouldn't be able to do
2 quite as good a job as somebody that was, you know,
3 familiar with the area.
4 Q. Any other reasons that you can recall that you
5 hired Patti Ball?
6 A. I'm trying to remember if there was a
7 recommendation. I don't know. No, I don't recall.
8 Q. Did you authorize Sharon Hammer to study for
9 the Idaho State Bar exam while she was working?
10 A. Yes, I did.
11 Q. Why?
12 A. I thought it would be a real asset to -- you
13 know, she did EMT training and firefighter training, and
14 if she was admitted to the Bar in Idaho, that could be
15 an asset to the City.
16 Q. Now, you testified that there were multiple
17 occasions where Sharon Hammer came to you about conduct
18 by Nils Ribi from 2009 to 2011; is that correct?
19 A. That's right. '10 and '11 in particular.
20 Q. Can you remember the first time that she came
21 to you, and what did she say was the conduct that she
22 was complaining about?
23 A. I don't recall the very first time.
24 Q. Do you remember anytime that she came to you,
25 and specifically what did she tell you?

Page 134

1 A. Yeah, multiple times. And I know
2 specifically, you know, this place, this place. No.
3 But if you take it in total context, if you look at
4 Council Member Ribí's behavior during public meetings,
5 and you say, oh, okay, well, he's a certain personality
6 type --

7 Q. No, I'm asking you about --

8 A. I'm getting to that, but I need context.

9 Q. No, I'm asking you: When did Sharon -- what
10 did she say to you? Not what did you observe or
11 anything yet. I'll get to that. But what did she
12 report to you was the conduct that she found offensive?

13 A. At these times, "He's at it again. He's
14 shouting out things." This person's a pretty clever guy
15 in the way he handles himself, and he's -- even though
16 he'd get overextended in public meetings where he would
17 blurt out and everything, but quietly, more quietly,
18 more surreptitiously, catch Sharon in places where he
19 would have demands by giving her orders and everything.

20 And she would continue to say -- she would
21 come over to my office and say, "Hey, he's completely
22 revamped all of these spreadsheets." I'll just use the
23 term "spreadsheets."

24 And I'll say, "Well, let me see."

25 "Well, he wants to do this, and he wants to do

Page 136

1 and go to a staff member and start demanding stuff. You
2 can't do that. It's inappropriate, and it was
3 harassment.

4 Q. Did you ever look at the policy manual to see
5 what -- how harassment is defined by the city policy
6 manual?

7 A. No. No, I'm going to say that I didn't. I
8 didn't. Did I go through the manual, no, I didn't do
9 that. I know what harassment looks like.

10 Q. All right. There can be sexual harassment?

11 A. Yeah, it wasn't that.

12 Q. It wasn't that. Was there -- was it gender
13 harassment?

14 A. Some of that.

15 Q. How was it some of that?

16 A. He has a -- my inclination is my -- what I've
17 observed, he has a little bit of difficulty with
18 females, especially if they're smarter than him.

19 Q. And that's just your opinion?

20 A. That's my opinion.

21 Q. Did Sharon ever say he's targeting me because
22 I'm a female?

23 A. Did she specifically say those words? No.

24 Q. Did she say anything like that that led you to
25 believe --

Page 135

1 that." I just can't, you know, go off and do all of
2 this stuff that -- you know, it has to be in front of
3 the council, it's got to be approved so the other
4 council members are aware of what all of this activity
5 is and everything.

6 And the impression that I had was that
7 Councilman Ribí really believed that Sharon Hammer
8 worked for him in some strange way. In fact, he told me
9 one time, he said, "I'm a taxpayer, she works for me."

10 I says, "What?" I said, "Go look at the org
11 chart. She doesn't work for you."

12 Q. So now I'm going back to my question. She
13 came in -- and just to restate what you said -- she
14 would come in and say that Mr. Ribí was asking her to
15 change or revamp spreadsheets?

16 A. Demanding. Let's use the correct words.
17 Demanding.

18 Q. And that was what she was complaining about?

19 A. Right.

20 Q. Did you consider that to be harassment?

21 A. Yeah.

22 Q. Why?

23 A. Sure did. He's going way out of the scope of
24 who he is, what his assignment is, what his role to play
25 in the government is. You can't take a council member

Page 137

1 A. Yes.

2 Q. -- that she believed that she was being
3 targeted because she was a woman?

4 A. Yeah, I think so.

5 Q. What did she say?

6 A. I think it's along the line of when Michelle
7 Frostenson made a mistake and didn't properly notify the
8 public on a budget meeting, man, he -- publicly in a
9 public meeting he really ripped into Michelle. And I
10 took the heat for Michelle. I said, "Michelle, you take
11 it easy. I'll take care of that."

12 Kelly Ek, boy, she's -- it turns out that the
13 females in there in the staff were, oh, kind of -- he
14 has a really poor attitude toward females, including
15 Joan Lamb, the female council member. Did other members
16 of the staff get chewed on by him? Yeah, the males did,
17 but not to the extent of the females, and not to the
18 level of Sharon Hammer. He picked her out especially.
19 Now, did other council members, other male council
20 members act in that same way? No.

21 Q. I'm trying to remember if you answered my
22 question. Did you look in the policy manual and see if
23 this conduct violated the policy manual?

24 A. I didn't specifically look at it, no.

25 Q. Did you -- when she would come in and talk to

Page 138

1 you about him being involved in these projects, what
2 action did you take? Did you ever write this down that
3 Sharon came in and complained?

4 A. I'm an engineer.

5 Q. Did you ever respond to her complaint?

6 A. Respond?

7 Q. To her about it.

8 A. Yeah.

9 Q. What did you tell her?

10 A. I said, "we'll" -- "this is really, really a
11 problem." I went to pay a visit to Adam King --

12 Q. When was that?

13 A. -- to complain. August of '11. And I said,
14 "This guy is" -- "he's getting worse and worse. He's
15 not getting better. He doesn't respond to anything."
16 And now we get into this little difficulty about talking
17 about lawyers and what the lawyers have told you in a
18 private conversation.

19 Well, I had a private conversation with Adam
20 King, and I have a feeling -- I have a suspicion that in
21 my conversation with Adam King that he contacted Nils
22 and other council members 15 minutes after I left his
23 office. My impression is that.

24 Q. And do you believe that that was
25 inappropriate?

Page 139

1 A. Totally.

2 Q. And did you --

3 A. I warned him in the meeting, I said, "Adam,
4 this is a private conversation. I'm having a discussion
5 with you about behavior, and I need" -- "I want to
6 discuss with you what recourse I have, either legally or
7 administratively or whatever."

8 Q. Did you ever talk to Nils Ribí about any of
9 these complaints by Sharon Hammer?

10 A. In two years?

11 Q. Yes.

12 A. Yeah.

13 Q. When was the first time you talked to him?

14 A. I don't know.

15 Q. Do you have any recollection what it was
16 about?

17 A. 2010. I said, "You can't do that. You can't
18 talk to her that way."

19 Q. About what?

20 A. Language that he's used in a meeting, in an
21 open meeting.

22 Q. Public meeting?

23 A. Public meeting. Afterwards I said, "You
24 can't" -- "hey, what are you doing?"

25 Q. And what was his response?

Page 140

1 A. Screw you. He didn't say that. Nils has a
2 way of saying screwing you without verbalizing it.

3 Q. Did Sharon Hammer, prior to September 2011,
4 ever come to you and say anything to the effect of
5 "Mayor, you haven't taken care of this problem with Nils
6 Ribí. I need you to take care of it"? Did she ever
7 indicate to you that she felt that you hadn't done
8 enough?

9 A. I don't have that impression, no.

10 Q. Turn to the book right there --

11 A. I'm going to add. Because we had -- there
12 were so many incidents and everything else, and
13 especially with Councilman Ribí being an elected
14 official, you can't just -- you can't just make a
15 pronouncement in some kind of a meeting that says
16 "You're fired" or "Get out of the building" or whatever.
17 You're very limited in what you can do.

18 Q. But you felt that you were doing everything
19 that you needed to do?

20 A. Trying to do, right.

21 Q. And Sharon Hammer never indicated to you
22 anything but the fact that you had been doing what she
23 expected you to do; correct?

24 A. What is this? What am I looking at here?

25 Q. Let me ask that question again first. Mayor?

Page 141

1 A. Yeah.

2 Q. "And Sharon Hammer never indicated to you
3 anything but the fact that you had been doing what she
4 expected you to do; correct?"

5 A. No. Rightly so, I think she was disappointed
6 in, I'll say, the system, and I think she was as
7 frustrated as I was in not having a real overt event to
8 occur of some sort.

9 Q. If you look at Hammer 138. At the bottom it
10 says "138." I think I had it open for you.

11 A. Yeah.

12 Q. This is a letter from Mr. Donoval?

13 A. Page 4?

14 Q. Yeah. Dated November 16th, 2011, to you. And
15 in the last paragraph it says, "On a personal note,
16 Ms. Hammer wishes to thank you for all of your efforts
17 in seeking to ensure that Ms. Hammer has been protected
18 from Mr. Ribí and his insults, abuses, misconduct and
19 attacks during your term as Mayor. As has been stated,
20 Ms. Hammer has refrained from seeking the legal recourse
21 she is certainly entitled to against Mr. Ribí based in
22 large part on your personal promises and integrity."

23 Do you have any reason to disbelieve those --
24 that statement from Mr. Donoval on behalf of Sharon
25 Hammer?

Page 142

Page 144

1 A. What am I supposed to answer?
2 Q. Did she ever indicate anything different than
3 what I just read?
4 A. You mean like that [as read] "As has been
5 stated, has refrained from seeking" -- da-da-da-da --
6 "in large part on your personal promises and integrity."
7 Yeah, okay. Yeah, we did what we could.
8 Q. Right. And she agreed with that. Now, so far
9 you've explained -- you've described the conduct by
10 Mr. Ribi as loud in public meetings, demanding in
11 private to do certain things work related.
12 Is there anything else that you can describe
13 that Sharon Hammer complained about Mr. Ribi's conduct?
14 A. Okay. Well, let's change a couple of words
15 around. You've just used the word "loud." Yeah, you
16 can be loud and shout out to somebody, but how about in
17 the appearance of being unstable? That's different.
18 Loud and appearance of instability are two different
19 things.
20 Stomping down from the dais, throwing papers
21 in the air in a public meeting -- and Mayor Briscoe was
22 there when that occurred. I gaveled Council Member Ribi
23 to remain up in his area -- up at the dais, because it
24 was disrespectful to the people in the room and to his
25 fellow council members.

1 A. No.
2 Q. So --
3 A. Was she ever presented with the allegations
4 and allowed to respond? No.
5 Q. Well, we're just talking about the issues
6 dealing with her claims of -- or concerns about Nils
7 Ribi's conduct with her.
8 A. Right.
9 Q. So was there -- so prior to the election on
10 November 8th, when was the last event that Sharon Hammer
11 complained to you about Nils Ribi's conduct, that you
12 remember?
13 A. I think -- I don't know exactly, but I kind of
14 think August -- that meeting with Adam King when I
15 was -- went to his office to determine what kind of
16 formal recourse we could take with his behavior, that it
17 kind of went underground until the election.
18 So I have a feeling, between the first part of
19 August and the election in November, it was pretty
20 quiet. But if you work your way backwards from August,
21 it was a steady escalation in his behavior from, I'm
22 going to say, January of '10 to August of '11.
23 Q. And as you sit here today, between
24 January 2010 and August 2011, do you remember any
25 specific incident related to any specific topic where

Page 143

Page 145

1 Q. And was that -- was Sharon Hammer the --
2 involved in that?
3 A. Yes. Then -- sitting in the room.
4 Q. Okay. I mean, was --
5 A. I'm painting a picture of instability, okay,
6 which leads to this discussion about being concerned
7 about his behavior, being nervous about him in his
8 approach to Ms. Hammer, because this was escalating
9 toward the -- and it reached kind of a crescendo. As
10 soon as Mayor Briscoe won the election, they said,
11 "Okay, now we've got it."
12 Had I been reelected, this thing would have
13 gone back down, would have stayed below the radar, and
14 other approaches might have been made. But in any
15 event, the winners -- the winners became very arrogant
16 in the way they were approaching this thing. And this
17 just reached the crescendo. So you said "loud." I'm
18 not using that word. I want to move that up a step and
19 say, no, apparent instability, very erratic.
20 Q. So you said that after the November 8th
21 election, it escalated; is that your testimony?
22 A. It had been escalating up through
23 November 8th, and then the punch line was the November
24 11th executive session.
25 Q. Now, Sharon Hammer wasn't there, was she?

1 Sharon Hammer came in and said, "Nils Ribi's conduct is
2 a concern?"
3 A. This is really over the top. There were many
4 instances along the way. Then there was one, and I'm
5 trying to remember -- it was a budget session. But we
6 had some discussions, we went into recess -- I've
7 already answered this earlier -- we went into recess,
8 and Councilman Ribi and Sharon Hammer went into the
9 front part of the building to run some copies, and
10 that's when, I'm going to call it, an altercation
11 occurred. Not physical, but verbal.
12 Q. And to clarify, you weren't present?
13 A. Was not present. She came back down the hall
14 -- because you asked me when did she talk to me about
15 it -- she came down the hall, and then she said, "Man,
16 this is" -- "he's really out of it now."
17 Q. And did she ask you to do anything about that?
18 A. Well, yeah, we're going into a meeting -- what
19 do you mean "do"? You mean go and attack him? Like do
20 what?
21 Q. No. Did she file a complaint, wanted you to
22 follow up, investigate it?
23 A. Yeah. Yeah. I'd say, "Well, I wonder what
24 we're going to do about this?"
25 Q. Did you follow up after the meeting and talk

Page 146

Page 148

1 to her about --
2 A. Yes.
3 Q. -- what -- when did you talk to her?
4 A. I don't recall that meeting. I think that
5 meeting might have gone -- you know, the next day-ish.
6 Q. And what did you say?
7 A. I said that that -- "this is really a
8 problem," because, once again, he doesn't work for me, I
9 can't fire him.
10 Q. This is what you told Sharon?
11 A. Told Sharon. I said, "I can't discipline him.
12 I don't have a mechanism, so I want" -- "I don't know
13 what we're going to be able to do." And I said, "I'm
14 going to start asking like the lawyer, like Adam King,"
15 which was the wrong idea.
16 I called -- who did I call? I called a guy up
17 in Caldwell, Idaho. Oh, gosh, what was his -- and he
18 was put on to me by somebody. Because I had made a
19 complaint to the ICRMP guys, and they just -- they
20 stiff-armed me. The executive director shuffled me.
21 The claims manager shuffled me.
22 And so I called a guy up in Caldwell, Idaho,
23 to say, "What mechanism do you have?" And then he
24 started asking me about, "Do you have any city policy
25 relative to censure or discipline?"

1 A. Basically, "Do what you can, Mayor. Give
2 me" -- "help me figure this out." And I said, "I'll do
3 everything I can."
4 Q. Did you feel that this was more of an abuse of
5 authority, as you recall it from your Boeing days, where
6 somebody over authority of somebody else is
7 intimidating?
8 A. From the Boeing days, if you're in authority,
9 you're the supervisor, and you have somebody working for
10 you -- which wasn't even the case in this case -- it's
11 especially bad if a -- let's say a vice president from
12 this division goes way over to a different division of
13 Boeing and starts chewing out a lower-level employee
14 than reports to him in this division, that would be --
15 that would be nailed immediately, if not sooner. Be a
16 nice talking to, and that would come under -- that would
17 be a disciplining kind of an action.
18 Q. But what I'm getting at: Was this, in your
19 estimation, observation -- this intimidation more
20 related to Mr. Ribí's perceived authority over Sharon
21 Hammer or Kelly Ek or Michelle Frostenson or David
22 Blampied?
23 A. Yeah. And it could have been -- it could have
24 risen to a lower level. Like, for instance, you know,
25 "He's really a pain in the butt, isn't he?" And

Page 147

Page 149

1 And the one time I went to the city policy
2 manual -- or Sharon did, I guess -- and say, "No. No
3 city policy. You can't" -- "we're high and dry on
4 taking a council member and disciplining him," which is
5 bizarre. Every agency of government has something
6 somewhere in there that allows censure.
7 Q. So your recollection is the copy -- copy
8 center issue occurred prior to your August meeting with
9 Adam King?
10 A. I think so.
11 Q. Because you said between August --
12 A. I'd have to go and -- yeah.
13 Q. Between August and November it was kind of
14 quiet on this part?
15 A. I believe so.
16 Q. Other than -- well, just for the record, then,
17 did you ever do a formal investigation -- well, back up.
18 Did Sharon Hammer ever tell you, "I'm filing a
19 formal complaint pursuant to the policy. I want you to
20 investigate this and do something to protect me," or
21 were they just these conversations you had?
22 A. Just conversations.
23 Q. So she never asked you to follow up and do
24 anything other than what you had -- what you've
25 testified you did?

1 everybody would say, "Yeah, he's kind of a pain in the
2 butt." But it's beyond that. It's aggressive pain in
3 the butt, which is a whole different thing than just
4 being a jerk. You know, all of us in this room are
5 jerks at different times. But then when you really act
6 it out aggressively, that's different.
7 Q. When Michelle Frostenson met with you on
8 October 5th, you said that she talked to you about the
9 car and Sharon's use of the car.
10 Did you tell Michelle at that time that you
11 had given Sharon permission to use the car?
12 A. I did not discuss -- I listened to Michelle
13 Frostenson, and I -- and she started with -- let's
14 remember, she started with 133,000, not the car. And I
15 listened to her and didn't engage with her at all, no
16 interaction. "Tell me what you're talking about. Yep.
17 Okay, I got that. Yeah. Uh-huh. Uh-huh. Uh-huh."
18 Q. Did you share that information with anybody
19 else after that meeting?
20 A. Not that I recall, no. In fact, I don't think
21 I even -- did I even talk to Sharon about this? Between
22 October 5th -- I may not have even talked to Sharon
23 about it. I'll tell you why. Once again, it smelled a
24 little --
25 Q. It smelled in October?

Page 150

1 A. October 5th, that meeting smelled.
2 Q. But now you testified earlier that your
3 thought was, "Let's get the election past us, and then
4 we'll investigate this"; was that true?
5 A. Yeah. Here's October 5th. We're heavily
6 engaged in bond -- you know, having citizens come in and
7 talk about the bond issue and everything. Here's
8 Michelle Frostenson giving me a little package of back
9 fence gossip -- that's the way I thought about it in my
10 mind.
11 I had in my mind, hmm, this sounds like the
12 Virginia Egger scenario. So I said to myself, I think
13 I'm going to -- I'm going to let this lay. I've got
14 time. Don't make -- don't go chasing around and have
15 any discussions with Sharon about it or anybody.
16 If you'll notice in my testimony all of this
17 time, there are plenty times of when I just -- it's not
18 often -- but occasionally I just shut up and listen. I
19 don't engage. I don't interrogate. I don't say -- I
20 just say, "Hmm. Hmm. Oh, really? Is that right?"
21 Q. So my question was --
22 A. And let it go.
23 Q. My question was --
24 A. Yeah.
25 Q. -- I believe you testified that you were just

Page 151

1 going to wait until after the election, and then you'd
2 get to the bottom of it or do investigation.
3 Did you take any action in that regard before
4 November 11th?
5 A. No, not that I recall.
6 Q. Then on November 14th -- that's the Monday
7 meeting after November 11th -- over the weekend, had you
8 discussed any of these allegations with Sharon Hammer?
9 A. No. Remember, it was -- remember the
10 executive meeting on Friday? I can't talk with Sharon
11 Hammer about details of the executive meeting; right?
12 Q. I'm just asking if you did. Did you have any
13 conversations with Jim Donoval over the weekend?
14 A. I'm going to continue on with my answer.
15 Executive meeting, no details. Sharon Hammer was
16 presented on Friday with this deal, and that was it.
17 Did I talk to them over the weekend? No.
18 On November 14th, back in executive session,
19 still can't be talking about all of this. And I
20 thought, okay -- since Sharon was so adamant on Friday,
21 I said, "Great. Now we'll go and present to the council
22 that she rejected their offer just right out of hand.
23 Now what we'll do is start going through the correct
24 process of understanding what these allegations are.
25 Not just scraps of paper handed out to people in a

Page 152

1 council meeting." And Bob Youngman and I didn't take
2 the papers home with us, so I have no idea what was on
3 Michelle Frostenson's scraps of paper.
4 Q. Do you remember being served with a letter
5 from Jim Donoval over the weekend threatening a lawsuit?
6 A. If it came in a manila envelope, I threw it
7 away.
8 Q. And with regard to the Patti Ball report,
9 isn't it true that you didn't even read the whole
10 report, you didn't want to read the whole report for the
11 same reason?
12 A. I read the December 13th report, yeah.
13 Q. You read the whole thing?
14 A. I read the -- yeah. Mayor Briscoe and I were
15 there together reading it.
16 Q. Do you remember when Patti Ball was hired that
17 with the retaining letter there was a control group
18 where she would communicate with you, Mayor Briscoe --
19 Mayor-Elect Briscoe, and Adam King?
20 A. Yeah. That's the way it was presented, right.
21 Q. Now, moving forward --
22 A. Let's get clear about that, I was the
23 authority. And I thought it was reasonable to be
24 holding the meetings in -- at the attorney's office,
25 because when material would come out, we could put them

Page 153

1 in his office, and they'd be held there, he'd be
2 required to hold that material there.
3 My invitation to Mayor Briscoe was not that he
4 had co-authority with me. Huh-uh. That wasn't it.
5 Mayor Briscoe was there as a courtesy from me so that
6 when this extended through his swearing in date, he'd be
7 aware of everything that went on, as a courtesy.
8 Q. And wasn't it your understanding that any time
9 Patti Ball provided any substantive report, that it
10 would include both you and Mayor-Elect Briscoe being
11 present?
12 A. No, it would be if there was a substantive
13 report, she would present it to me, I would accept the
14 report and invite Mayor Briscoe in to review the report
15 with me.
16 Q. Did you consider the December 13th report to
17 be a draft?
18 A. No. It was final as far as I was concerned.
19 Q. Do you recall testifying in a hearing before
20 Judge Stoker on January 11th that you believed that the
21 report was a draft report?
22 A. Did I say that?
23 Q. I'm just asking, do you remember testifying to
24 that?
25 A. No.

Page 154

1 (Discussion held off the record.)
2 Q. (BY MR. NAYLOR) So --
3 A. I should have fired her that afternoon of
4 December 13th.
5 Q. But you didn't, did you?
6 A. I didn't have the authority, I don't think. I
7 might have. I should have tried it.
8 Q. But you didn't tell her she was terminated on
9 December 13th, did you?
10 A. No. What a sad story.
11 Q. While Sharon Hammer was on administrative
12 leave, up until you brought her back -- well, until you
13 notified her on December 23rd, I believe, did you have
14 any communications with her?
15 A. Communication? Like the Christmas party?
16 Q. No, other than the public meeting. Did you
17 ever -- isn't it true that on December 22nd you went
18 over and met with Sharon Hammer and Jim Donoval to try
19 and resolve the matter?
20 A. December 22nd? First of all, I do remember
21 meeting with them. Now, what's the nature of the
22 meeting?
23 Q. Didn't you go over there to try and get her to
24 resign and pay severance?
25 A. No. I knew that was a dead deal. I think I

Page 155

1 threw out some kind of a number. I said, "What if it
2 was a million dollar settlement, you know, what about
3 that?"
4 And I think her response, basically, was,
5 "Okay. A million bucks, Ribi resigns, full apology from
6 everybody, mayor, and council, in the Express," et
7 cetera.
8 So I said, "Okay. Well, I know where that's
9 going." And then I brought her back on -- but I had to
10 wait the week to make sure that Michelle Frostenson and
11 Kelly Ek had cooked themselves for that week.
12 Q. What do you mean "cooked themselves"?
13 A. Well, I testified earlier that they spent the
14 entire week threatening other staff members as the
15 winners.
16 Q. I missed -- why did you have to wait a week
17 then?
18 A. I wanted Michelle and Kelly to solidify their
19 position as the winners for one full week to see exactly
20 how they would respond and react and what kind of people
21 they were going to be. And then I brought Sharon Hammer
22 back the following week. So Michelle Frostenson and
23 Kelly Ek had a one-week opportunity to abuse the other
24 staff members.
25 Q. You did that to allow them to take this action

Page 156

1 without any kind of --
2 A. To see what kind of people they were, yeah.
3 Q. And you didn't take any supervisory action to
4 try and quell that?
5 A. Other staff members complained.
6 Q. Did you --
7 A. I said, "I have an idea. Why don't you call
8 Kirt Naylor and make him aware of this kind of stuff."
9 So you'd be aware, when we were sitting in this meeting
10 here on May 28th, of that activity so that you could
11 testify that Michelle Frostenson and Kelly Ek were
12 abusive to the staff members.
13 Q. Did you ever go to Michelle or Kelly Ek and
14 say, "Staff have been complaining about you" --
15 A. No.
16 Q. -- "you need to shape up"?
17 A. No. No.
18 Q. Why not?
19 A. Because I wanted them to spend one full week
20 setting themselves up. Okay? I told them, when they
21 were back on Monday, I said, "You're going to" -- "what
22 I need you to do" -- and I gave them strict instructions
23 on their behavior, and they, basically, didn't do it.
24 Q. I handed you SV 338 and 339. This is a
25 "NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE PENDING

Page 157

1 INVESTIGATION" dated December 16th, 2011.
2 A. Uh-huh.
3 Q. Is that your signature on it?
4 A. It is.
5 Q. And in it, at the first -- the second
6 paragraph, it says, "Because the matter under
7 investigation potentially affects other employees, we
8 cannot provide additional details about the behavior
9 that is of concern at this time."
10 A. Where are you?
11 Q. The second paragraph of the notice.
12 A. Go ahead.
13 Q. At the top it says, "YOU ARE HEREBY NOTIFIED
14 THAT subsequent to placing you on paid leave, we have
15 received information indicating that you may have acted,
16 omitted acts, or otherwise performed in ways which are
17 contrary to the" --
18 A. Where you reading from? Are you still in the
19 same paragraph?
20 Q. First paragraph.
21 A. Third paragraph?
22 Q. First paragraph.
23 A. First?
24 Q. Do you see the first paragraph there?
25 A. Right at the top there?

Page 158

1 Q. Yeah. It says, "YOU ARE HEREBY NOTIFIED"?
2 A. Right.
3 Q. Now, you signed this notice?
4 A. Yes. "That you may have acted."
5 Q. Correct.
6 A. Right.
7 Q. There was still an investigation going on?
8 A. Alleged.
9 Q. And let me hand you SV 344 and 345. This is
10 also dated December 16th. "NOTICE OF ADMINISTRATIVE
11 INVESTIGATION; ORDER TO PARTICIPATE IN INTERVIEW PROCESS
12 AND ADVICE OF RIGHTS."
13 And you signed this as well; correct?
14 A. That's right.
15 Q. Okay. And what interview process, was it your
16 understanding, was still ongoing?
17 A. Hold on a second here. This is dated the
18 16th?
19 Q. That's right. And if it will help, you can go
20 back to SV 338.
21 A. Yeah. What were we thinking? Had the
22 attorney general's investigation started?
23 Q. Unfortunately --
24 A. I think it was --
25 Q. Unfortunately, you just need to go with your

Page 159

1 memory. I can't really testify.
2 A. I'm thinking that this had to do with the --
3 with all of this material going to the prosecuting
4 attorney's office, and going to -- off to -- well, they
5 ended up over at the attorney general's office, so
6 that's what I was thinking. What were you thinking?
7 Q. Well, and if you look at SV 338, the third
8 paragraph where it starts, "THEREFORE, UNTIL THE
9 INVESTIGATION INTO SUCH INFORMATION IS SUFFICIENTLY
10 COMPLETED," if the AG's investigation wasn't started
11 yet --
12 A. Well, it was coming.
13 Q. -- then what investigation are you referring
14 to?
15 A. I think I'm talking about the Jim Thomas step.
16 Didn't you turn over material to Jim Thomas?
17 Q. Do you remember when that was turned -- was
18 that turned over during your tenure as mayor?
19 A. I believe so, yeah. I mean, otherwise how
20 would he start the investigation during my tenure.
21 Q. I'll hand you SV 342. Is that the
22 authorization that you're talking about to turn --
23 [as read] "to notify the Blaine County Prosecutor with
24 regard to the information and facts discovered in an
25 employment investigation that may be subject of criminal

Page 160

1 conduct"?
2 You testified to that earlier; correct?
3 A. Yeah. This was your idea, that you were going
4 to take this material, and you were going to go to the
5 prosecuting attorney. And I'm thinking that you're the
6 attorney for the -- for ICRMP, and you're going to
7 aggressively go and get this done. And so I think I was
8 telling, properly, Ms. Hammer that there are other
9 investigations going on, they're coming.
10 Q. And this --
11 A. And you have to cooperate.
12 Q. And you authorized our law firm to notify the
13 Blaine County Prosecutor?
14 A. That was your idea, yeah.
15 Q. And the employment investigation that -- where
16 it says, "information and facts discovered in an
17 employment investigation," isn't that the Ball
18 investigation?
19 A. Yeah, it just happened on the 13th. Yeah.
20 Uh-huh.
21 Q. So then on December 23rd you notified -- this
22 is SV 260 -- you notify Ms. Hammer that you're going to
23 have her return to work; correct?
24 A. Yep.
25 Q. And then at the bottom it says, "if you feel

Page 161

1 any animosity," do you see that in the middle? "Also"?
2 A. "Untoward behavior directed at you, you must
3 come to me," yeah.
4 Q. "You must come to me with the information to
5 give me a chance to resolve it. If you are not
6 satisfied you are free to contact Kirt Naylor at his
7 offices in Boise."
8 A. Yep.
9 Q. Why did you refer her to me?
10 A. So that if the Frostenson-Ek, et cetera, which
11 you might have already known about -- that she would
12 come in to me and say, "Hey, you know, Frostenson's
13 really at it and everything."
14 And I said, "Well, I've got an idea" -- in
15 these words and maybe verbally -- "I think you ought to
16 talk to Kirt Naylor. He's the" -- "he seems to be the
17 guy that's running this thing for the insurance company,
18 so off you go."
19 Q. So did you consider that contacting the Naylor
20 law firm would be a way of resolving an issue for city
21 employees?
22 A. I don't know. I don't know. I didn't
23 overthink it like that, no.
24 Q. But at that time you understood that the
25 Naylor & Hales law firm was still involved in the

Page 162

Page 164

1 litigation with the city; correct?
2 A. Yes. Which is a really, really strange thing
3 to have council members and employees suing each other
4 with a law firm -- anyway.
5 Q. Let me hand you SV 261 through 264. This is a
6 memo to you from Sharon Hammer dated December 26th,
7 2011, and it's titled "(the 'IPPEA Law Suit') Settlement
8 Proposal."
9 Do you remember seeing this?
10 A. Yeah.
11 Q. So, now, Ms. Hammer returned to work on
12 December 27th; correct?
13 A. Right.
14 Q. And this is dated December 26th. Do you know
15 how you got this?
16 A. I don't know. I think I -- did I get this in
17 an email? I don't remember how I got it, but -- and I
18 think I got it doing business -- maybe it was handed to
19 me by Sharon.
20 Q. So at this point --
21 A. December 26th was a holiday, because Christmas
22 was on Sunday. So the business -- the first business
23 day was the 27th.
24 Q. So you may have gotten this on the 27th?
25 A. Could be.

1 material, and I would have thought, fine. What's the
2 question?
3 Q. If you had seen it.
4 Okay. And then if you look at the last
5 sentence -- on the first page, sorry.
6 A. First page?
7 Q. Yeah. The last sentence on the first page, SV
8 274. It says, "Given the discrepancy in my accruals, a
9 full and complete audit of not only my account but the
10 accounts of all City of Sun Valley employees must be
11 conducted immediately."
12 Do you know if that ever was done?
13 A. Between December 27th and when I swore in
14 Mayor Briscoe on January 3rd -- January 3rd or 4th, no.
15 Q. Did you take any action with regard to this
16 memo?
17 A. No. Running out of time. Well, but I did
18 have the vacation accrual little report that I talked
19 about.
20 Q. Here's another memo on December 27th, 2011,
21 from Sharon Hammer. It's Exhibit 31 to a previous
22 deposition regarding termination process. And this is
23 directed to you.
24 And this, in general -- I can just tell you,
25 she talks about -- the last paragraph talks about "this

Page 163

Page 165

1 Q. Did you ever talk to Sharon Hammer about this
2 memo before it was written? Did she tell you she was
3 writing it or anything?
4 A. No. This was all new. And you want to see
5 how I might have taken it from her? "Yeah. Uh-huh."
6 Q. So you didn't read it in detail?
7 A. No.
8 Q. Why not?
9 A. Not my business.
10 Q. Okay. Let me hand you --
11 A. Wasn't she in a lawsuit situation with the
12 city? What role am I supposed to play in that one?
13 That's okay. I'm going to stop asking you questions,
14 and I'm going to answer.
15 Q. We're on to SV 274 to 280. And this is a memo
16 dated December 27th to you, again, from Sharon Hammer,
17 "Demand For Audit of Sabbatical Time."
18 Do you remember reading this?
19 A. This one -- boy, do I remember this? You have
20 to give me a moment. I think you -- I know my name is
21 on it. I have a tough time remembering this. Okay. It
22 could be -- just sitting here, this could be Sharon
23 putting her material together that she needed to be
24 dealing with you guys. And I was incidentally shown
25 this to give me the idea that she was going after this

1 interpretation is final and not appealable about how the
2 city administrator can be terminated."
3 Do you remember seeing this memo?
4 A. No. But we're in the stage now where I'm
5 running out of time of being able to do anything. This
6 was like, "Mayor, be aware that this is the kind of
7 stuff that I'm, you know, doing." And I had not
8 terminated her, so I -- she was an employee on
9 December 27th.
10 Q. Did you ask her to draft any of these memos
11 from December 26th to December 27th?
12 A. No.
13 Q. So she was doing these all on her own?
14 A. On her own.
15 Q. Well, you didn't direct her to; correct?
16 A. I did not direct her to prepare this memo, no.
17 Q. And nobody else has authority over her, except
18 for you; correct?
19 A. Right.
20 Q. And the last paragraph it says,
21 "CONCLUSION" -- and tell me if you remember this -- "As
22 the duly authorized Sun Valley City Administrator, I
23 have the authority to make final determinations of the
24 application of all Sun Valley Personnel Policies And
25 Procedures, and neither the Sun Valley City Attorney,

Page 166

Page 168

1 the Sun Valley Mayor or the Sun Valley City Council has
2 the authority to question or over-rule such findings."

3 First of all, do you remember reading that?

4 A. No.

5 Q. Okay. As you sit here today, and having just
6 read that, do you agree that the city administrator has
7 that authority over the mayor and city council?

8 A. I don't know. I'd have to study it. I don't
9 know. In the next 30 seconds, I don't have an opinion.
10 You lawyers might, but I don't.

11 Q. Here's Exhibit 29. That was --

12 A. Are you getting the impression that I'm a
13 pretty [sound effect][hand gesture]. County Prosecutor
14 Jim Thomas summarized it pretty carefully -- pretty
15 nicely, that I had a lax administration. And I'd like
16 to take him and take him over to a company and give him
17 200 employees and say, "Now, tell me what kind of
18 chicken guy you'd be." But go ahead.

19 Q. All right. Exhibit 29, SV 281, is a
20 December 28th, 2011, memo from Sharon Hammer to you and
21 the city council. "Demand for Audit of Retirement
22 Contributions."

23 And in the last paragraph -- first of all, do
24 you remember seeing this?

25 A. Vaguely. Remember, this -- I considered all

1 Do you recognize this email exchange between
2 you and Sharon Hammer on December 29th, 2011?

3 A. Yeah.

4 Q. She asks, "Can you please advise me on the
5 status of the investigation of me?"

6 And you respond, "Here is the way I understand
7 it now. A draft report was prepared by Patti Ball. It
8 was reviewed by Mayor Elect Briscoe, ICRMP attorneys,
9 Adam King and me."

10 Is that the draft report -- is that the Patti
11 Ball report you reviewed on or about December 13th?

12 A. Right. That led me to bring the entire report
13 into question. As far as I'm concerned, the matter is
14 closed. There is the rest of the...

15 Q. It's part of the record.

16 Here's SV 327. This is a letter from Sharon
17 R. Hammer with the title "Sun Valley City
18 Administrator," dated December 30th, 2011, to Kelly Ek.
19 And this is, basically, a tort claim notice of her
20 intent to file multiple tort and other claims against
21 Kelly Ek?

22 Do you see that in the second paragraph? Do
23 you remember seeing this?

24 A. I do not remember seeing this.

25 Q. Okay. Does it concern you now, reviewing this

Page 167

Page 169

1 of these memos to be boilerplate that Sharon was putting
2 together in her dealings with you guys.

3 Q. The lawsuits?

4 A. Yeah.

5 Q. So you didn't really -- did you consider these
6 requiring you to take some formal action?

7 A. Didn't know, didn't care.

8 Q. And the last sentence says, [as read] "Given
9 this discrepancy, a full audit" -- "full and complete
10 audit of not only my account but all of the accounts of
11 city employees must be conducted immediately."

12 Did you do that?

13 A. Didn't do that. I mean, a full and complete
14 audit -- you know what, how long did it take the audit
15 to occur a year later or something?

16 Q. Now, those earlier notices from December 16th,
17 you met over in Boise at the office of Naylor & Hales
18 for those; right?

19 A. I think I remember December 16th riding up
20 with you and Dave Sasser.

21 Q. And Dave saser is another attorney with Naylor
22 & Hales?

23 A. Right.

24 Q. Okay. I'll hand you -- we're just cruising
25 through these -- SV 332.

1 SV 327, that Ms. Hammer files a tort notice on
2 letterhead that says she's the Sun Valley City
3 Administrator?

4 A. No opinion.

5 Q. Okay. Do you remember why you drove to Boise
6 and met at Naylor & Hales on December 16th?

7 A. Absolutely. I think you and I weren't getting
8 along, I made several disparaging remarks about your
9 performance and everything, complained to the ICRMP
10 people about you, and I think you asked me to go to your
11 offices so Dave Sasser, who's a really smooth kind of
12 nice guy, highly respected guy, that you could romance
13 me into place. That's as crude a way that I can
14 describe it, but that was my feeling. I continue to
15 feel that way.

16 Q. And why did you wait until December 23rd,
17 2011, to bring Sharon Hammer back to work?

18 A. Same -- what is the Monday prior to
19 December 25th of '11? What date is that?

20 Q. No, what I'm talking about is, if you read the
21 draft Patti Ball report on December 13th, and you've
22 testified that you felt that it was flawed, why didn't
23 you just bring her back on December 14th?

24 A. I had, in my mind -- more things had to play
25 out, get more information about -- you know, from

Page 170

1 Tammi -- Tammi Hall, and other kinds of things that --
2 material I was trying to put together. Didn't
3 necessarily want to be precipitous in this -- I mean,
4 next day, you know, December 14th, why do that?

5 What I was really looking for is more comfort,
6 in my mind, that I knew what I was talking about. I had
7 lots of data out there. I had this Patti Ball junk, and
8 I had lawsuits flying around and all kinds of other
9 things. And so it took me a little bit of time -- I,
10 basically, had made my decision by -- does anybody have
11 a calendar for December of '11.

12 Q. What day are you looking for?

13 A. I'm looking for the Monday -- I know how to
14 figure this out. December 25th was Sunday, Christmas
15 Day. Back up seven days. December 18th was the Sunday?

16 Q. Correct.

17 A. Patti Ball report was the 13th. If you'll
18 notice, I brought Michelle Frostenson and Kelly Ek back
19 to -- off leave on the 19th. On the 19th.

20 Q. Okay.

21 A. Okay. So what you can tell from this is I had
22 made my decision to bring everybody back off of leave on
23 the 16th. And you might ask me, hey, did you tell
24 anybody that you had decided to do that? And my answer
25 is, no, I didn't tell anybody.

Page 171

1 So I brought Michelle Frostenson and Kelly Ek
2 back off of leave on the 19th, let the week play out so
3 that I could see how Michelle and Kelly were going to
4 react to all of this. They had finished up everything
5 that they were going to do that week, and on the 23rd, I
6 think, I told Sharon that she was coming back off of
7 leave and to be in to work on the 27th. The 26th was
8 the holiday. So I, basically, made my decision three
9 days after the Patti Ball report. So that tells me...

10 Q. So during that period of time, when was it
11 that Tammi Hall put together her information and her
12 report for you, before or after December 13th?

13 A. I'd have to go get my report. You know, the
14 Tammi Hall -- you're asking about the Tammi Hall report?

15 Q. Yeah.

16 A. I'd have to go and pull that out, but I'm
17 thinking it was within a couple of days after the Patti
18 Ball report, I think.

19 Q. So when you read the Patti Ball report on or
20 about December 13th, you had not yet gotten Tammi Hall's
21 information that debunked the leave time; is that
22 correct?

23 A. You know, I can't verify that, Kirt. I'm
24 going to have to go -- I simply must go get that Tammi
25 Hall report so that I can figure out what the time line

Page 172

1 was.

2 Q. Can you fax or email that to me?

3 A. I'll be home Friday night --

4 Q. Well, whenever you get there and you find it.

5 A. Okay.

6 Q. Yeah, that would be great.

7 THE WITNESS: You want to get a copy also?

8 MR. SWARTZ: Please.

9 MR. NAYLOR: Yeah, you can send it to him.

10 I'll send it to him also.

11 THE WITNESS: Come to think of it, you know,
12 you've been sitting here this whole time, I haven't
13 supplied you with anything, that I know of, except right
14 here.

15 MR. NAYLOR: I'm almost done. Let's take a
16 quick break.

17 (Break taken.)

18 Q. (BY MR. NAYLOR) Let me hand you SV 2713.

19 A. Oh, boy.

20 Q. Do you remember sending this email --

21 A. Look at the opening sentence.

22 Q. -- dated December 20th, 2012, regarding
23 Virginia Egger?

24 A. Yeah.

25 Q. You wrote this to the mayor and the city

Page 173

1 council; correct?

2 A. Yeah. Oh, man. Whoa.

3 Q. Was this when you were feeling kind that day?

4 A. Oh, man.

5 Q. Do you remember why you chose to write this?

6 A. Yeah. I started to look at the -- in fact, I
7 think I sent a -- anyway, I put a memo together that
8 talked about the victims, and I made a list of 31 staff
9 members -- not including paid on call firefighters -- of
10 31 staff members, 18 of them had been ousted, resigned,
11 threatened, all kinds of stuff.

12 So 18 out of 31 staff people. And it seemed
13 to be like a hit list. Whoever was a friend of the
14 mayor -- mine, a friend of mine, was out. And I've got
15 the list at home. I can send that to you.

16 Q. Did you receive any response from this email,
17 that you recall?

18 A. No. No. They very wisely just hit the delete
19 button.

20 Q. You speculate?

21 A. Yeah.

22 Q. Do you remember going to the Mountain Express
23 office and meeting with Brennan Rego on November 30th,
24 2012?

25 A. I think I was -- it could be. I think I was

Page 174

1 over there a couple of times, yeah.
2 Q. And this was an incident where you threatened
3 him with your -- because you carry a concealed weapon.
4 A. No.
5 Q. You don't remember that?
6 A. I remember commenting about it, but it had to
7 do with a -- because I had this list of names, and it
8 had to do with a paid on call firefighter that I was
9 very concerned about for my safety.
10 Q. Did you threaten Brennan Rego?
11 A. No.
12 Q. Did you tell him that if he wasn't reporting
13 accurately about Sharon and Jim Donoval, that you'd --
14 you threatened him?
15 A. No.
16 Q. Have you ever seen a police report related to
17 that incident?
18 A. No.
19 Q. Let me hand you SV 2710 to 2712. Go ahead
20 and -- let's go off the record and give you a moment to
21 read through that since you haven't seen it before.
22 (Brief pause.)
23 MR. NAYLOR: Back on the record.
24 THE WITNESS: No thanks. You keep it.
25 Q. (BY MR. NAYLOR) So you've had a chance to

Page 175

1 read this police report?
2 A. Yeah.
3 Q. In it Mr. Rego -- who is Brennan Rego, for the
4 record?
5 A. He was a reporter for the Express.
6 Q. And in this -- in his handwritten statement,
7 he says, "Wayne Willich, during a private,
8 off-the-record meeting between just me and him said if I
9 abused any information he gave me off the record (by
10 printing) he had a 'concealed weapons permit' that he
11 would use."
12 Did you ever say that to Brennan Rego?
13 A. Did he preface it at all by what I was talking
14 about?
15 Q. Well, did you make that statement?
16 A. I don't recall that, no.
17 Q. Do you remember this meeting?
18 A. I remember the meeting.
19 Q. And did you talk to him about private,
20 off-the-record statements?
21 A. Having to do with staff victims -- staff
22 victims at City Hall. Did he say anything about the
23 paid on call firefighter that I was concerned about?
24 Q. I'm just reading to you --
25 A. Yeah, okay. Yeah, I don't know. Yeah, those

Page 176

1 are his words, so, yeah.
2 Q. Do you have a concealed weapons permit?
3 A. I do.
4 Q. Do you carry a gun?
5 A. No. Typically, no.
6 Q. Then he says, in his handwritten statement, "I
7 said, 'unfortunately threats don't scare me.'" And then
8 he goes on to say, "But it did scare me and I perceived
9 it as a death threat."
10 Do you remember making that statement?
11 A. No. Is that why I had to report publisher Pam
12 Morris to the sheriff's office?
13 Q. Well, were you then thereafter banned from
14 going to the Mountain Express office?
15 A. Pamela Morris accosted me at the door of her
16 building and said, "Get out of here. You're not welcome
17 here. Get out of here."
18 I said, "Whoa." When you're accosted by,
19 number one, a female, number two, the publisher of a
20 newspaper that has total control over all of the
21 messages sent out, I wisely said, "Hey, whoa, whoa,
22 whoa," walked out, I said, "I was just trying to hand
23 this material over to your newspaper."
24 And she said, "You're still" -- "You're at the
25 sidewalk."

Page 177

1 I said, "Fine, I will go to the public right
2 of way," which I did, backed way back. I said, "Now can
3 I hand this to you?" And she grabbed it and went back
4 in the building.
5 So I went to Sheriff Ramsey and said, "Man,
6 she's got something going." I don't know what she's got
7 going, but I've stayed away from her. She's not a lady
8 to be trifled with.
9 Q. Did that incident with Ms. Morris occur before
10 or after this meeting with Brennan Rego?
11 A. After. Did I connect them? No. I didn't
12 know what she had in mind. Can I talk about the
13 firefighter at all?
14 Q. It's not relevant.
15 A. You don't want me to tell you about who I was
16 concerned about in this whole staff thing, about the
17 firefighter that is talking about unstable people that
18 have been fired from the Sun Valley police force?
19 Q. No. You don't want to malign somebody's
20 reputation in this deposition --
21 A. Of course not.
22 Q. -- so that's why I'm not asking you.
23 A. Got it. And I'm not giving you the name
24 either.
25 Q. What I'm asking you is, though: Do you

Page 178

1 remember making the statement -- in whatever context --
2 to Brennan Rego, "I carry a concealed weapons permit,
3 and I would use it"?
4 A. I don't remember "and I will use it." I do
5 remember "I have a concealed weapons permit," yeah.
6 Q. Why did you tell him you had a concealed
7 weapon --
8 A. Can we get back to the firefighter? That was
9 the subject of the conversation.
10 Q. Okay. That's fine. All I'm saying is
11 whatever the conversation was, why did you tell him you
12 have a concealed weapons permit?
13 MR. SWARTZ: Objection; misstates prior
14 testimony.
15 Q. (BY MR. NAYLOR) Did you say that? Let's make
16 the record clear, did you say --
17 A. "I have a concealed weapons permit," yes, I
18 said that.
19 Q. You did say that?
20 A. I did say that.
21 Q. Why did you say that?
22 A. I was talking in the context of a person -- an
23 unnamed person that I was very concerned that if his
24 name appeared in print connected to my name, that I was
25 at risk.

Page 179

1 Q. And so why did you mention the concealed
2 weapon? I don't connect the two.
3 A. To indicate to Brennan Rego, "Don't be
4 publishing these names with me, Mayor Willich said that
5 XXX guy is a bad guy, because this guy is dangerous. I
6 have a concealed weapons permit, and I have to protect
7 myself." That was the context.
8 Now, I don't know why -- I saw Brennan -- the
9 last time I saw him was last November when he was
10 running for Ketchum city council, and he and I were
11 cordial. I wished him well. I'm not afraid of Brennan
12 Rego.
13 Q. But you carry a weapon?
14 A. I'm afraid of this guy. I'm concerned about
15 this guy that, you know -- that isn't Brennan. It's not
16 Brennan. I'm not concerned about him at all.
17 Q. So when Brennan Rego states, "I did" -- "it
18 did scare me, and I perceived it as a death threat,"
19 what's your response to that?
20 A. That's too bad. If I could talk to him now,
21 I'd say -- I would say, "Man, I am really sorry. It had
22 nothing to do with you, Brennan. It had to do with this
23 unnamed person." So I don't know why he did that.
24 And the publisher of the newspaper really -- I
25 reported her activity to Sheriff Ramsey. I said, "She's

Page 180

1 really [sound effect].
2 MR. NAYLOR: No further questions.
3 THE WITNESS: She's threatening.
4 FURTHER EXAMINATION
5 QUESTIONS BY MR. SWARTZ:
6 Q. Mayor Willich, is there anything that you
7 would like to add to your testimony today?
8 A. No.
9 MR. SWARTZ: I don't have anything further.
10
11 (Deposition concluded at 2:39 p.m.)
12 (Signature requested.)
13
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Page 181

1 CERTIFICATE OF WITNESS
2 I, WAYNE WILLICH, being first duly sworn, depose
3 and say:
4 That I am the witness named in the foregoing
5 deposition, Volume I, consisting of pages 1 through 180;
6 that I have read said deposition and know the contents
7 thereof; that the questions contained therein were
8 propounded to me; and that the answers contained therein
9 are true and correct, except for any changes that I may
10 have listed on the Change Sheet attached hereto.
11 DATED this ____ day of _____, 20__.
12
13
14 WAYNE WILLICH
15 SUBSCRIBED AND SWORN to before me this ____ day of
16 _____, 20__.
17
18
19
20 NAME OF NOTARY PUBLIC
21
22 NOTARY PUBLIC FOR _____
23 RESIDING AT _____
24 MY COMMISSION EXPIRES _____
25

Page 182

CHANGE SHEET FOR WAYNE WILlich

1
2 Page Line Reason for Change
3 Reads
3 Should Read
4 Page Line Reason for Change
5 Reads
5 Should Read
6 Page Line Reason for Change
7 Reads
7 Should Read
8 Page Line Reason for Change
9 Reads
9 Should Read
10 Page Line Reason for Change
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20 Page Line Reason for Change
21 Reads
21 Should Read
22 Page Line Reason for Change
23 Reads
23 Should Read
24 Use a separate sheet if you need more room.
25 WITNESS SIGNATURE

Page 183

REPORTER'S CERTIFICATE

1
2 I, ANDREA L. CHECK, CSR No. 748, Certified
3 Shorthand Reporter, certify;
4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth, at
6 which time the witness was put under oath by me;
7 That the testimony and all objections made
8 were recorded stenographically by me and transcribed by
9 me or under my direction;
10 That the foregoing is a true and correct
11 record of all testimony given, to the best of my
12 ability;
13 I further certify that I am not a relative or
14 employee of any attorney or party, nor am I financially
15 interested in the action.
16 IN WITNESS WHEREOF, I set my hand and seal
17 this 6th day of June, 2014.
18
19 *Andrea Check*
20
21 ANDREA L. CHECK, C.S.R. No. 748, R.P.R.
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My Commission expires July 20, 2016.

EXHIBIT 25
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 25
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
 Plaintiffs,) Case No. 1:13-cv-211-EJL
vs.)
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
 Defendants.)
_____)

DEPOSITION OF DEWAYNE BRISCOE
MAY 29, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public

Page 2

Page 4

1 THE DEPOSITION OF DEWAYNE BRISCOE was taken on
2 behalf of the Plaintiffs at the offices of Jones &
3 Swartz, 1673 W. Shoreline Drive, Suite 200, Boise,
4 Idaho, commencing at 9:06 a.m. on May 29, 2014, before
5 Beverly A. Benjamin, Certified Shorthand Reporter and
6 Notary Public within and for the State of Idaho, in the
7 above-entitled matter.

8 APPEARANCES:

9 For Plaintiffs:

10 Jones & Swartz, PLLC
11 BY MR. ERIC B. SWARTZ
12 1673 W. Shoreline Drive, Suite 200
13 Boise, Idaho 83702

14 For Defendants:

15 Naylor & Hales, PC
16 BY MR. KIRTLAN G. NAYLOR
17 950 W. Bannock Street, Suite 610
18 Boise, Idaho 83702

19
20 ALSO PRESENT: Nils Ribi
21 Sharon Hammer
22 James Donoval
23
24
25

1 DEWAYNE BRISCOE,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4

5 EXAMINATION

6 QUESTIONS BY MR. SWARTZ:

7 Q. Please state your legal name.

8 A. It's DeWayne Laverne Briscoe, D-e-W-a-y-n-e,
9 L-a-v-e-r-n-e, B-r-i-s-c-o-e.

10 Q. Mayor, you understand that you have just been
11 administered and accepted the oath to tell the truth
12 today?

13 A. Yes.

14 Q. You understand that the testimony that you are
15 going to give here today carries the same force and
16 effect as testimony given in a court of law?

17 A. Yes.

18 Q. And whether you have been through a deposition
19 personally or not before today, I know you've sat
20 through several preceding yours, so this is going to be
21 old hat to you.

22 You sat through Mr. Youngman's; correct?

23 A. Yes.

24 Q. Ms. Hammer's; correct?

25 A. Yes.

Page 3

Page 5

1 INDEX
2 TESTIMONY OF DEWAYNE BRISCOE PAGE
3 Examination by Mr. Swartz 4
4

5 E X H I B I T S

6 NO. DESCRIPTION PAGE
7 None
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1 Q. Mr. Donoval's; correct?

2 A. Yes.

3 Q. And then yesterday Mayor Willich's?

4 A. Yes.

5 Q. Did I miss any? You weren't there for
6 Suhadolnik or Griffith; is that right?

7 A. I was not there at either one.

8 Q. So you have a pretty good feel for the
9 process?

10 A. Well, I'm not an attorney, but I've observed
11 it. It's like being a baseball player. I'm in the
12 audience, I'm not playing.

13 Q. Very good. Do you have any questions about
14 the proceeding that we need to address before we get
15 going?

16 A. No.

17 Q. You understand that we do need you to answer
18 audibly, no "uh-huhs" or "huh-uhs" or head shakes.
19 Okay?

20 A. Yes.

21 Q. Yes, no, or a narrative as the question may
22 require. All right?

23 A. I'm sorry?

24 Q. Yes, no, or a narrative as the question may
25 require would be your answer. Do you understand that?

Page 6

1 A. It may require a yes, a no, or a narrative,
2 you or me, or both?
3 Q. Your answer, I'm just asking that you answer
4 audibly, with an affirmative yes, an affirmative no, or
5 an affirmative statement. Is that okay?
6 A. Understood.
7 Q. If I ask a question that you do not
8 understand, please let me know that you do not
9 understand it and I will rephrase it. Okay?
10 A. Yes.
11 Q. If you answer a question, I will understand
12 that you understood the question. Okay?
13 (Ms. Hammers entered the proceedings.)
14 A. Yes.
15 Q. If you don't know the answer to a question
16 today, by all means simply say that you do not know.
17 I'm not looking for you to guess. I'm just looking for
18 your personal knowledge. Okay?
19 A. Yes.
20 MR. NAYLOR: For the record, Sharon Hammers
21 just arrived.
22 Q. (BY MR. SWARTZ) Mayor, you were asked to
23 bring materials with you today, any documents in your
24 possession, custody, or control that relate to your
25 denials, your allegations, or your defenses asserted in

Page 7

1 either the state lawsuit or the federal lawsuit. Do you
2 see that on page 2 of your amended notice?
3 A. Yes.
4 Q. Did you bring any materials with you today?
5 A. No.
6 Q. Did you look for any materials?
7 MR. NAYLOR: I can represent all the materials
8 have been provided through discovery. Any materials
9 related to his defense have been provided already in
10 discovery.
11 Q. (BY MR. SWARTZ) If today, Mayor, you need to
12 review any of the materials that Mr. Naylor is referring
13 to, we can have him identify what they are and we can go
14 ahead and get copies for you. Okay?
15 A. Yes.
16 Q. Did you do anything other than meeting with
17 Mr. Naylor to prepare for your deposition today?
18 A. No.
19 Q. Did you review any materials?
20 A. I reviewed the last page of the Patty Ball
21 report in regards to her, I believe it's her conclusion
22 and recommendation.
23 Q. Which Patty Ball report?
24 A. A copy out of the Patty Ball report.
25 Q. Do you know what date the report had on it?

Page 8

1 A. No. I just looked at one page. I didn't have
2 the whole report. I only had a copy of the Patty Ball
3 report, final conclusionary page, that was all.
4 Q. You didn't know which Patty Ball report it was
5 that you reviewed?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: There is one Patty Ball report.
8 Q. (BY MR. SWARTZ) That you are aware of?
9 A. That I'm aware of.
10 Q. Why was it that you chose to review that one
11 single page of that report?
12 A. It was important for me to at least look at
13 what her conclusions were for the report, or what her
14 recommendations were for the report.
15 Q. What is your recollection as you sit here
16 today of her recommendations?
17 A. Her recommendation -- I can't state it
18 verbatim. Her recommendation was that there were
19 significant findings in her mind that there should be
20 additional studies done to follow up the Patty Ball
21 report. Additional, either investigation studies -- I
22 don't remember how it was worded.
23 Q. Why was that important to you to review before
24 your deposition?
25 A. To be able to understand a little better the

Page 9

1 Patty Ball report. Not to understand the Patty Ball
2 report, but the Patty Ball report as it is.
3 Q. I don't understand what you mean.
4 A. It's my understanding there are court
5 proceedings going on now, that the validity of the Patty
6 Ball report is being contested. I haven't been to any
7 of those hearings.
8 Q. But you felt like that was going to be
9 something that was going to be talked about today and
10 you needed to review it, or what was your thought
11 process in selecting that single page of that single
12 document to review in preparation for your deposition?
13 A. Just to try to understand the legal process
14 the City was going through, because I haven't been to
15 any of those hearings.
16 Q. Did you review anything else?
17 A. No.
18 Q. Other than Mr. Naylor, did you speak with
19 anyone else about your deposition?
20 A. No.
21 Q. I understand that you are currently the mayor
22 of the City of Sun Valley, and your term began in early
23 January of 2012. And you are still in your first term;
24 correct?
25 A. Yes.

Page 10

1 Q. Prior to that you sat as a city council member
2 for the City of Sun Valley; is that right?
3 A. Yes.
4 Q. When did your term as a city council member
5 first begin?
6 A. I believe in January of 2008. It was a
7 four-year term.
8 Q. At some point you were elected as the
9 president of the council; is that right?
10 A. Yes.
11 Q. Do you recall when that took place?
12 A. Beginning of my third year in the term.
13 Q. So January 2011?
14 A. Must have been.
15 Q. Having sat through Ms. Hammer's deposition,
16 Mr. Donoval's deposition, Mr. Youngman's deposition,
17 Mayor Willich's deposition, I may have missed one or
18 two, but is there anything that comes to mind that was
19 said at those depositions that you disagree with?
20 MR. NAYLOR: Object to the form.
21 THE WITNESS: Yes. Not specific things. I
22 didn't take any notes. But yes, in general there might
23 have been some things that I disagreed with.
24 Q. (BY MR. SWARTZ) Do you recall any of those
25 items as you sit here today?

Page 11

1 A. Mr. Willich's testimony is a little more fresh
2 in my mind, since it was yesterday. Yes, I would say
3 there were some disagreements of Mr. Willich's
4 testimony.
5 Q. What do you recall that you disagree with?
6 A. In general I would term his testimony as
7 revisionist history, and some of the historical things
8 that he has mentioned I would not concur with.
9 Q. Do you recall what?
10 A. Yes. His interpretation of the statutory
11 authority of the mayor versus the council is one. His
12 remembrance of the executive session on, I think
13 probably November 11.
14 The city council made it clear that both he
15 and I were jointly to be in charge of the authority
16 given by the council to retain an independent
17 investigator. Mr. Willich insisted it was his total,
18 sole authority. And he indicated that I was only there
19 at his invitation, which it wasn't. I was there
20 throughout the procedures, throughout the selection of
21 Patty Ball.
22 I disagree with his assumption on the dates
23 that the Patty Ball report was complete or still was a
24 draft and in progress. I do not believe he had the
25 authority to end the Patty Ball report. That could only

Page 12

1 be done by the council since the council authorized it.
2 And I disagreed with his interpretation that
3 as mayor he does not have to abide by the policies of
4 the City, that he can establish his own policies for the
5 City, and the statutory authority granted the separation
6 of powers of council and mayoral authority. Only the
7 council can establish policy for the City, and the mayor
8 is to carry out those policies. Those are just some of
9 the things that come to mind.
10 Q. Are there any others?
11 A. There could have been. I don't recall right
12 at the moment. I'd have to listen to the transcript or
13 see it again.
14 Q. If you think of anything additional today
15 while we are talking, go ahead and stop me and let's
16 talk about them today. Okay? Is that okay?
17 A. Uh-huh.
18 Q. Is that a "yes"?
19 A. Yes.
20 Q. Let's walk through the five bullet points that
21 you listed today as the items that you disagreed with
22 Mr. Willich on.
23 His description of the mayor versus city
24 council authority. What is it about his description
25 that you disagreed with?

Page 13

1 A. I don't know his exact quotes, but I believe
2 he felt he was not bound to exactly follow the
3 established policies of the City of Sun Valley.
4 Q. In all respects or just as to Ms. Hammer's
5 employment?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: I don't recall exactly his
8 exact words. My interpretation was, and I would have to
9 read his transcript to be sure, but my interpretation, as
10 I recall it, is that all policies, he had the authority
11 to set his own rules.
12 He kept referring to his experience at Boeing
13 rather than government experience, how we did it at
14 Boeing, and he was going to do it the same way he did it
15 at Boeing. He kept mentioning the word "Boeing" and his
16 experience at Boeing, that he was going to run things
17 according to the way he did it at Boeing.
18 Q. What is your understanding, having sat as a
19 city council member and now serving as mayor, what is
20 your understanding of the mayor's role in the City?
21 A. The mayor's role is to carry out the policy as
22 established by the council.
23 Q. Anything else?
24 A. And not to make policy. Yes, and statutorily
25 you conduct meetings, you arrange the agenda, and you

Page 14

1 sign contracts that are approved by the council.
2 Q. Is it the council or the mayor that handles
3 personnel issues?
4 A. The mayor.
5 Q. Is it the city council or the mayor who
6 directs employees to perform certain functions?
7 MR. NAYLOR: Are you still asking him as to
8 his understanding?
9 MR. SWARTZ: Yes.
10 THE WITNESS: Would you repeat the question.
11 Q. (BY MR. SWARTZ) Sure. Who has the authority
12 to direct personnel to engage in certain activities? Is
13 it the mayor or the city council?
14 MR. NAYLOR: Object to the form.
15 THE WITNESS: Neither, because statutory
16 authority, the city attorney is the only one that works
17 directly under the direction of the mayor. The city
18 administrator then administers the City under the
19 direction of the mayor. So it is the city administrator
20 whose responsibility it is under the job description to
21 administer the personnel policies of the City.
22 Q. Based on your experience as a city council
23 member and as mayor, whose job is it to approve
24 financial expenditures of the City?
25 A. In the chain that I saw when I was council

Page 15

1 person, it was the city treasurer, and then it was
2 signed off by the city administrator, and then signed
3 off by the mayor, and then presented to the council for
4 approval, in that chain of command.
5 Q. Can you recall as you sit here today an
6 expenditure that Ms. Hammer made that the council did
7 not approve?
8 A. Would you rephrase your question.
9 Q. Sure. Do you recall an expenditure that
10 Ms. Hammer made that the city council did not approve?
11 A. Not specifically. The council approved a
12 general, -- there was one motion made to approve the
13 finances as reported by the City to pay the City bills.
14 The motion was not to approve any individual aspect of
15 that.
16 Q. Prior to that motion to approve the package of
17 bills, the treasurer has reviewed all of those bills;
18 correct?
19 A. And the city manager.
20 Q. And the mayor.
21 A. And the mayor.
22 Q. And as I understand it from testimony that
23 we've heard thus far, at the time there was a city
24 council person who would be on a rotation and would come
25 in and review those as well; is that right?

Page 16

1 A. Yes. The city council person was always last.
2 It had always been signed off by the city administrator,
3 treasurer, and the mayor. In my experience I was the
4 last one to see it.
5 Q. And after the city council individual member
6 reviewed them, then they would be presented to the
7 entire council; is that right?
8 A. Correct.
9 Q. Prior to November 11, 2011, the special city
10 council meeting executive session that was called, had
11 you heard of any allegations of misconduct that
12 Ms. Hammer was alleged to have engaged in?
13 A. No.
14 Q. Prior to that meeting, had you had any
15 personal experience with Ms. Hammer where you believed
16 that she was not performing the functions of her job?
17 MR. NAYLOR: Object to the form.
18 THE WITNESS: Repeat the question, please.
19 Q. (BY MR. SWARTZ) Before November 11, 2011, did
20 you observe anything that led you to believe that Ms.
21 Hammer was not performing her job as the city
22 administrator?
23 MR. NAYLOR: Object to the form; foundation.
24 THE WITNESS: That is a general summation,
25 without any specifics involved, as to what you are

Page 17

1 referring to. Were there some instances where I felt
2 there were lapses in the administration of the City?
3 Yes.
4 Q. (BY MR. SWARTZ) What were those?
5 A. Lack of some oversight of City employees.
6 Q. Is there anything you can recall specifically
7 about that?
8 A. Yes. We had a bond issue that was important
9 to the City for infrastructure, and we were under a very
10 tight time frame for publication in the newspapers and
11 things. And in the important phase of that, near the
12 end, legal information as required was not submitted for
13 publication, and it put us back a ways. And that was
14 the direct responsibility of the city administrator to
15 see that was done and it wasn't done.
16 Q. What legal information was not prepared in a
17 timely manner?
18 A. I haven't reviewed that document, but it was a
19 notice requirement under a time frame for bond issue
20 publications and elections. That is one that I
21 specifically recollect.
22 Q. Are you saying it just wasn't submitted, the
23 paper for publication in a timely manner, or there was a
24 component of the notice, a legal component of the notice
25 that was lacking?

Page 18

Page 20

1 A. The notice wasn't put in the paper, and it set
2 the time frame back on the bond issue. I don't know the
3 exact details. But we were under pressure to get the
4 bond issue done, and that was one that was missed.

5 Under statutory requirements, going toward the
6 bond issue, there has to be publications in the paper in
7 a certain time frame, within certain days, between
8 certain meetings. As I recall, that set the process
9 back because something couldn't occur because that
10 publication, legal publication wasn't done. That's one
11 that sticks out.

12 I think that also there was a lack of
13 accountability for employees on their time frames, their
14 work hours.

15 Q. When was the bond notice not timely submitted,
16 do you recall?

17 A. I don't know the exact date.

18 Q. Do you know the year?

19 A. It was before the last election. It was two
20 years ago.

21 Q. 2010?

22 A. No, no. Two years ago.

23 Q. 2012?

24 A. It was part of the election where I was
25 elected as mayor.

1 out?

2 A. Without any form I said. I didn't have any
3 information, except verbal. It was the police chief,
4 Cam Daggett; the assistant police chief, Mike Crawford,
5 and the building inspector, Eric Adams; and two other
6 employees. I don't remember the other two.

7 I immediately questioned the police chief and
8 assistant police chief as to why they were going to be
9 gone at the same time and who was going to be in charge
10 of the City for the police department while they were
11 gone.

12 I asked the building inspector why he was
13 going and what his meeting was, and he said it was some
14 meeting pertaining to building inspectors in either
15 Idaho Falls or Pocatello. And I asked him what was the
16 purpose of the meeting, why he was going, and he said I
17 just always go.

18 And I asked him to give a report to me when he
19 came back as to what the meeting was about. I said, Is
20 there a form that you fill out when you come back as to
21 the importance of the meeting? He said, No. I said, I
22 want you to fill out one and tell me the importance of
23 the meeting, why you go, what the dates were of the
24 meetings. He never followed through with it.

25 Q. Did you relay your request to Mr. Adams to

Page 19

Page 21

1 Q. So it was before November of 2011?

2 A. Yes. Because the bond issue was on that
3 ballot in September a few days -- the week before.

4 There are instances of perhaps -- that I would
5 consider perhaps a lack of supervision of employees or
6 accountability of employees.

7 And if you want an instance, my first day on
8 the -- my first day as mayor, essentially I had five
9 people lined up in the hall; the police chief, the
10 assistant police chief, the building inspector, and two
11 other people, coming in and informing me that they were
12 going to various meetings throughout the state or the
13 country. And I asked them where their forms were for
14 that, and they said they didn't fill out any forms.
15 They just notified people when they were going to
16 meetings. And I felt that was a lack of accountability
17 of management control of employees.

18 Q. You believe that lack of accountability of
19 employees was Sharon Hammer's responsibility, that fell
20 on her shoulders?

21 A. Yes, because she's responsible for the
22 administration of the City, over the treasurer, over the
23 city clerk, over the receptionist.

24 Q. So who all was lined up in the hall getting
25 ready to go to meetings without this form being filled

1 complete this form and this report to Sharon Hammer to
2 make sure that she was going to follow up?

3 A. No, he was to report to me.

4 Q. And his failure to report to you is something
5 that you believe was Sharon Hammer's fault?

6 MR. NAYLOR: Object to the form.

7 THE WITNESS: I didn't say that. There was no
8 required paperwork, no required forms to be filled out.

9 Q. (BY MR. SWARTZ) That's what you believed was
10 Sharon Hammer's fault.

11 A. Yes, there should have been.

12 Q. So you are thinking on day one you arrive,
13 there should have been a dossier for you that outlined
14 where these folks with were going and why.

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: It should have been just more
17 than a verbal informing the mayor that they were
18 leaving.

19 Q. (BY MR. SWARTZ) Okay. What else, what other
20 lack of performance issues do you attribute to Sharon
21 Hammer?

22 A. Attendance.

23 Q. Whose attendance?

24 A. City administration and Sharon Hammer.

25 When I would go in to pick up my packet on

Page 22

1 Wednesdays before, the week before meetings, she was
2 seldom there, on Fridays. And I noticed on Fridays that
3 essentially the parking lot was empty, that employees,
4 only the necessary employees were there, such as the
5 city clerk, was frantically trying to get the City
6 agenda ready for the council people, sometimes was
7 really the only person there on Fridays.

8 Q. I was a little confused by your testimony. I
9 thought you started out saying you would go there on
10 Wednesday to pick up your packet.

11 A. Fridays.

12 Q. Fridays. Sorry.

13 A. The packet is supposed to be ready on Fridays,
14 the week before the council meetings. In general it was
15 usually late. And I observed the city clerk, Kelly Ek,
16 commenting she had not gotten the information from
17 Sharon yet to fill out the packets, and she was trying
18 to get the packets ready to put them out.

19 Q. So Sharon would not be there on a Friday,
20 nobody would be there on a Friday except for Kelly Ek,
21 and Kelly Ek --

22 A. No. That's mischaracterizing my statement.

23 I would say the usual, what I would expect,
24 the officers to be there, were not there on Fridays, and
25 that would include other employees as well. It appeared

Page 23

1 to be like people were working a four-day workweek, with
2 Fridays off. That's what it appeared.

3 Q. And when you would be there on the Friday
4 picking up your packet, it wouldn't be ready, and Kelly
5 Ek would just say, I haven't gotten the information --

6 A. Not every time. Occasionally, yes, on some
7 occasions. And I don't have any specific dates. That
8 was my general impression.

9 Q. Okay. And again, that is something that you
10 attributed to Ms. Hammer's failure to perform her job.

11 A. Part of her job description is -- yes, her job
12 description is to supervise the employees to make sure
13 these things are done.

14 Q. What else do you attribute to Sharon Hammer's
15 failure to perform her job?

16 A. Occasionally at council meetings there would
17 be council questions, there would not be adequate
18 information available for council members to question
19 specific agenda items.

20 Q. That took place over your four-year term as a
21 city council member?

22 A. Well, Ms. Hammer was not the city
23 administrator in my four-year term. At least during the
24 time that Ms. Hammer was city administrator.

25 Q. That is something that you felt like occurred

Page 24

1 frequently, that she did not provide sufficient
2 information to the council?

3 A. No. That is mischaracterizing my answer. I
4 observed that on a significant number of occasions she
5 was not prepared to answer the questions of the council
6 on specific entries that were on the agenda. The answer
7 was, I would have to look it up or study it or we would
8 have to do something.

9 Q. So it's not a lack of adequate information for
10 the council, it's she couldn't answer the council's
11 questions.

12 A. No, no.

13 Q. It's both? I'm just trying to understand.
14 I'm not trying to mischaracterize your words. I'm just
15 trying to make sure I understand your observations of
16 her failure to perform her job.

17 A. Under the job description, the city manager
18 should be prepared at every council meeting with the
19 full knowledge of all the agenda items to be able to
20 sufficiently answer questions of the council.

21 Q. You felt like she failed to perform that
22 function of her job on --

23 A. At times.

24 Q. At times. Okay.

25 What else did you observe in the way of Ms.

Page 25

1 Hammer's failure to perform her job?

2 A. In what time frame?

3 Q. While you were city council member.

4 MR. NAYLOR: Based on what he knew while he
5 was the city council member?

6 MR. SWARTZ: Yes, his observations.

7 THE WITNESS: At this time I don't recall
8 anything more at this time.

9 Q. (BY MR. SWARTZ) How about when you were
10 mayor, what did you observe Ms. Hammer do or not do that
11 you felt like was her failure to perform her job?

12 A. Ms. Hammer was -- when I became mayor, Ms.
13 Hammer was there on a very limited time basis, for just
14 a few days, and then was on paid administrative leave.
15 So I didn't at that time -- I'm trying to recall the
16 brief time frame between when I was inaugurated as mayor
17 and when Ms. Hammer then left on administrative leave.

18 I don't exactly recall the time frame of days.
19 I don't recall at this time anything more. I haven't
20 thought about it.

21 Q. Other than your first day on the job and these
22 people not having forms, that is the only item you can
23 recall during your term as mayor?

24 A. I didn't say -- that is a mischaracterization.
25 I said they didn't provide me with any forms.

Page 26

Page 28

1 Q. That is the only instance that you can recall
2 of her failure to perform her job while you were mayor?

3 A. I don't know how to characterize it, but there
4 was a dysfunction. I would use the term dysfunction of
5 sociability of employees within the City during that
6 time. There was a lack of communication, people weren't
7 speaking to each other.

8 I believe I would characterize it as, I
9 observed a general, as a generalization term, some
10 dysfunction of the City during those days. Not
11 specific, I can't think of specific instances now. It's
12 a general characterization of my observations.

13 Q. And that is something that you attribute to
14 Ms. Hammer?

15 A. It's within the job description of the city
16 administrator.

17 Q. Do you know were there was dysfunction and
18 lack of, I think you said sociability? Do you know what
19 was causing that?

20 A. At that time?

21 Q. Yes.

22 A. No.

23 Q. But it's something you believed was Sharon
24 Hammer's responsibility to cure or to prevent?

25 A. Yes.

Page 27

Page 29

1 Q. I understand you don't recall the exact dates,
2 but after you took office as mayor you placed Ms. Hammer
3 on administrative leave; is that correct?

4 A. Correct.

5 Q. Do you recall why you placed Ms. Hammer on
6 administrative leave?

7 A. Under advisement of legal counsel.

8 Q. I'm not looking for the specifics of advice of
9 legal counsel, but I'm curious, if there were particular
10 reasons that you were aware of as to why you made the
11 decision to place her on administrative leave.

12 A. I believe there was also a consideration of
13 statutes, of whistleblower status.

14 Q. She was a whistleblower or someone else was a
15 whistleblower?

16 A. Within the City there were a number of
17 whistleblower people that had been on administrative
18 leave brought back. Mr. Willich had placed -- Mayor
19 Willich had placed Sharon Hammer on administrative
20 leave, and it was his decision to bring her back on an
21 interim period.

22 Q. On an interim period?

23 A. Yes.

24 Q. How do you know it was an interim
25 reestablishment of her position?

1 A. Would you rephrase the question. I don't
2 understand what you are --

3 Q. Sure. As I understand it, Mayor Willich did
4 place her on administrative leave, pending the Patty
5 Ball investigation. And once he had concluded that
6 Sharon Hammer had done nothing wrong, he brought her
7 back on.

8 I didn't understand him yesterday to say that
9 it was an interim return to work. I understand that he
10 had concluded she had done nothing wrong and she was
11 back to work.

12 MR. NAYLOR: Object to the form.

13 Q. (BY MR. SWARTZ) Did you have a different
14 understanding?

15 A. My interpretation of the Patty Ball report
16 differs from former Mayor Willich's.

17 Q. I'm just asking about your statement that you
18 believe Mayor Willich brought Sharon Hammer back on on
19 an interim basis versus full reestablishment of her
20 position.

21 A. I don't believe the Patty Ball report had been
22 essentially completed at that time. It had not been
23 presented to the council. The Patty Ball report was not
24 completed until it was presented to the council.

25 Q. That happened on January 10, 2012?

1 A. Yes. Mayor Willich was premature to assume he
2 had the authority to state that the investigation was
3 concluded. He did not have that authority, only the
4 council had the authority, who appropriated the money
5 for it and made the terms of it could make that
6 determination that it was complete.

7 Q. Did Mayor Willich have the authority to return
8 Sharon Hammer to work?

9 A. Yes.

10 Q. And then when you took office, you exercised
11 your authority to put her back on administrative leave.

12 A. Yes.

13 Q. Did Mayor Willich have the authority during
14 his term to conclude that Sharon Hammer had done nothing
15 wrong and was entitled to be reestablished in her
16 position?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: No.

19 Q. (BY MR. SWARTZ) Who did he have to check
20 with? If he didn't have the authority, who did?

21 A. Council.

22 Q. So before he brought Sharon Hammer back on,
23 reestablish her in her position, found that she did
24 nothing wrong, he first had to get the council's
25 blessing?

Page 30

1 A. I wouldn't use the term "blessing." That is
2 your term.

3 Q. What term would you use?

4 A. The council authorized the report, the
5 extended report in executive session because other
6 findings came in, and the report was to be given to the
7 council. It was not his authority to be able to say
8 that the Patty Ball report has ended or to make any
9 conclusions from it because it was not ended.

10 Because the investigation and Patty Ball's
11 final conclusion was that there were -- not final
12 conclusion. But her conclusion was there was
13 significant findings that there should be additional
14 studies made, and she even mentioned the words possible
15 criminal involvement. I don't use it. That was Patty
16 Ball's report.

17 So Mayor Willich, in terminating the --
18 claiming to terminate the Patty Ball report, was not
19 following through with the recommendations of the
20 report. And those recommendations of the report should
21 have been given to the council. The council didn't see
22 the Patty Ball report until much later.

23 This was an independent report. It was not an
24 in City report. If this report was being done by a City
25 employee, Mr. Willich might have had the authority to

Page 32

1 report. And the council authorized additional funds to
2 continue the Patty Ball report to go into the fire
3 department investigation.

4 Q. Who had the authority to direct Patty Ball in
5 her conducting of the investigation?

6 MR. NAYLOR: Object to the form.

7 THE WITNESS: The terms of Patty Ball's
8 investigation would determine initially -- the terms of
9 the investigation were such that she would conduct
10 certain findings. If she found in her mind evidence
11 that additional studies should be made for the
12 possibility of criminal investigation, she would end
13 her report at that time. And her recommendation was
14 that it be followed up with additional investigations.

15 Q. (BY MR. SWARTZ) When was this conveyed to
16 Patty Ball, this directive?

17 A. I wouldn't use the word "conveyed," because
18 the interview with Patty Ball was bilateral. Mayor
19 Willich and I made certain recommendations that her
20 study be conducted. She had her own parameters that we
21 had to agree with.

22 Q. What were her parameters that you had to agree
23 with?

24 A. She wanted authority to be able to interview
25 whoever she wanted to interview, and let the process

Page 31

1 say, Yes, I'm ending your investigation. But this was a
2 specific outside agency that he did not have the
3 authority over, an outside independent investigator.

4 Q. Who did have authority over Patty Ball?

5 A. Authority?

6 Q. Yes.

7 A. Define what you mean by "authority."

8 Q. Well, I'm just using your word. You said that
9 Mayor Willich did not have authority over Patty Ball.
10 I'm asking who did have authority over Patty Ball?

11 A. The council directed that Mayor Willich and I
12 jointly retain -- interview and retain an independent
13 outside investigator, and after that selection was made
14 the council authorized the mayor to sign the contract
15 for it.

16 So authorize, the council directed the intent
17 of the investigation, and that was to be followed
18 through.

19 Q. What did the council direct the intent of the
20 investigation to be?

21 A. I don't recall the exact wording of the
22 intent. The intent was twofold. It was an
23 investigation of internal accounting within the City,
24 and then an investigation of the fire department was
25 then added sometime in the process of the Patty Ball

Page 33

1 lead wherever the process she felt it would go. And
2 then she would give us periodic updates.

3 Q. Anything else?

4 A. Anything else in respect to what, Mr. Swartz?

5 Q. Her parameters.

6 A. Her parameters?

7 Q. Yes.

8 A. She reported to Mr. Willich and I. We usually
9 had meetings in Mr. Adam King's office, the city
10 attorney. Mr. Naylor was brought in, along with ICRMP,
11 to be a part of the discussion during the Patty Ball
12 report while we were discussing the Patty Ball report.

13 When you mentioned the authority, Mr. Willich,
14 former Mayor Willich erroneously interpreted that he had
15 the total authority over the Patty Ball report, to
16 determine the parameters, to declare it ended, to guide
17 it and who would report to who. And he and I had a
18 disagreement over a meeting as to how that might be
19 carried out.

20 Q. Was that the December 13 meeting or was it
21 before December 13?

22 A. It was a date -- I don't know the exact. It
23 was the date in which we were presented with the draft
24 of the Patty Ball report. And Mr. Willich read the
25 first few pages of it, probably five pages, and he

Page 34

1 turned to me and he says, This could implicate me. And
2 he said, I'm taking control of this. I want to end it
3 now, and I want everything to go through me with Patty
4 Ball, and then I will report back to the council.

5 And I reminded him that he couldn't do that,
6 that we had the joint responsibility to do it. And we
7 went on a conference call with Mr. Naylor and Adam King.
8 And he was adamant at that time, and I remember his
9 exact words, turning to me, he said, This could
10 implicate me, and I want this brought to a halt now, and
11 everything is going to go through me now.

12 And we objected and said, You can't do that.
13 It has to go through me and it has to report to the
14 council. The conversation ensued, to protect all
15 individuals in the City. And the assumption that we had
16 made is that, with Patty Ball, that City employees that
17 were interviewed, that the Patty Ball report would be
18 made private.

19 And the discussion ensued as to, from this
20 point on for the draft, who should be the contact
21 between Patty Ball and Mr. Willich. And it was
22 determined that Mr. Naylor would be that contact with
23 Patty Ball, and that this was to retain the privacy for
24 employees, for attorney-client privilege. So it would
25 remain private for the protection of our employees,

Page 35

1 because they were promised protection, that the City
2 would not make the Patty Ball report public.

3 And at that particular time, at that
4 particular meeting Mr. Willich objected and then finally
5 agreed and said, Yes, now I understand. Mr. Naylor can
6 now be the go-between between Patty Ball and us.

7 Q. All that transpired at that December 13
8 meeting?

9 A. I'm not sure of the date, the date we were
10 presented the first draft.

11 Q. In Adam King's office?

12 A. Yes.

13 Q. You said Adam King was on the phone or he was
14 present?

15 A. Mr. Naylor was present by conference call.

16 Q. Was Adam King present?

17 A. Yes.

18 And I was deeply concerned about trying to
19 protect the privacy of the employees.

20 Q. What employees were mentioned in the report,
21 do you recall?

22 A. I don't recall at that time who had been
23 interviewed. I had been interviewed.

24 Q. You had been?

25 A. Yes, I had been interviewed.

Page 36

1 Q. Okay. And so you were looking to protect your
2 privacy?

3 A. No, no, I didn't say that. I said the privacy
4 of the employees. The agreement was the employees who
5 would be interviewed, Ms. Ball felt that to really
6 obtain honest interviews they should be offered, at
7 least the City would attempt confidentiality.

8 Q. Was the Patty Ball report ever released to the
9 public?

10 A. Not by the City.

11 Q. Do you know who released it to the public?

12 A. Must have been the prosecuting attorney for
13 Blaine County, Jim Thomas. The City did not release --
14 we kept it locked up. I kept mine locked up. Adam King
15 kept it locked up. The City Council members were only
16 allowed to read it in Adam King's office, and it was
17 locked up. We made every attempt to keep this out of
18 the public eye and out of anyone's eyes who wasn't
19 entitled to see it. And that followed on when I was
20 mayor. Council members objected to that, they wanted to
21 take it home. We told them no.

22 Q. Was there any concern about protecting Sharon
23 Hammer from the contents of the report?

24 A. Of course.

25 Q. Being exposed publicly?

Page 37

1 A. Of course.

2 Q. Why?

3 A. She was a City employee. She came under the
4 same context of all of us. And she was interviewed.
5 And anyone that was interviewed was given that promise,
6 that the City would try to keep this report private.

7 Q. So let's go back to when you and former Mayor
8 Willich were interviewing Patty Ball, you were having
9 your bilateral interview to discuss what you wanted her
10 to do for the investigation.

11 Was it determined at that time that the
12 investigation was going to include allegations of
13 misconduct that Ms. Hammer was alleged to have engaged
14 in?

15 A. There was no presumption of anything. It was
16 to be an investigative report starting from scratch with
17 no presumption of anything, guilt or innocence or
18 anything else, just to start an independent
19 investigation.

20 One of the reasons that Mayor Willich was
21 adamant on picking her was she was already prepared.
22 She had already done the studies of the City, she had
23 read City policies, she had understood what was going on
24 in the City, whereas the other people we interviewed
25 were going to start cold.

Page 38

1 And Mr. Willich was particularly impressed,
2 and he wanted to know if she had done work with
3 governments before. She said she had. And he wanted an
4 example of, What government work have you done recently?
5 And she said, Well, I did a -- either a county or a city
6 recently, and it started out as a simple investigation
7 and the sheriff is now in jail. And Mr. Willich says, I
8 want her.

9 Q. Let's back up just a little bit as to why the
10 city council ultimately wanted to do this -- hire this
11 independent fact-finding investigator. As I understand
12 it, allegations were brought to light at the November
13 11, 2011 executive session by Michelle Frostenson and
14 Nils Ribi; is that correct?

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: No. No, it's not correct.

17 Q. (BY MR. SWARTZ) Can you correct me?

18 A. You included Nils Ribi. I don't recall Nils
19 Ribi. It was Michelle Frostenson made a report to the
20 city council in executive session over what she
21 observed. I would call them irregularities.

22 Q. Who called the special executive session on
23 November 11, 2011?

24 A. It was a combination, I believe, of the mayor
25 called with three council members. I was called by

Page 39

1 Councilman Ribi. As council president they asked me
2 that the treasurer, Michelle Frostenson, wanted to give
3 a report to the city -- to the city council in executive
4 session, that she was concerned about something from the
5 audit. I wasn't told what. I wasn't told how or what
6 it was. And I said, Okay, I'll be one of the three.

7 Under the rules, three council people -- under
8 the statutes, three council people can request the mayor
9 to have a meeting, or three council people can do it
10 themselves and fill out a form. We didn't fill out a
11 form, that I recall, the three council people. Mayor
12 Willich was advised of this, he went along with it, so a
13 meeting was called.

14 So to say that three people called the
15 meeting, I don't think is totally correct, because we
16 didn't go in to the city clerk with a petition for the
17 meeting by three people, as would be required under
18 statute, so we did not do that. So Mayor Willich
19 concurred and scheduled it.

20 Q. Do you know if Michelle Frostenson had brought
21 her allegations to anyone other than the full city
22 council on November 11 before that date?

23 A. Only from her recollection that she had
24 presented -- she had presented -- she had a packet of
25 documents, and she said that she had scheduled an

Page 40

1 appointment with Mayor Willich on October 5, with a
2 meeting, and that she had presented verbally her
3 concerns. And I believe her concerns were such that she
4 felt there were problems -- well, I'm only relating what
5 I heard from her, and I'm trying to remember. This is
6 two years ago.

7 And she mentioned that she had met with Mayor
8 Willich, and she had the stack of documents, and that
9 Mayor Willich was rather dismissive of her, and he
10 refused to look at any of the documents that she
11 presented to him on October 5.

12 So following that meeting she felt it was
13 important enough to then try to go to the council,
14 because she felt, in my mind, my interpretation was she
15 had felt rebuffed by the mayor because he wouldn't look
16 at any of her documents. That's what I was told. I
17 wasn't there. I didn't see it.

18 Q. Did she meet with anyone else after Mayor
19 Willich on the 5th and before meeting with the council
20 on the 11th that you know of?

21 A. I don't know of any. I didn't have any
22 contact with her at all.

23 Q. Before November 11.

24 A. Before November 11.

25 Q. Do you know what city council member she

Page 41

1 contacted following her meeting with Mayor Willich on
2 October 5 and preceding the November 11 meeting?

3 A. I would only know she contacted Councilman
4 Ribi, because he was one that called me. I don't know
5 who else, if she contacted anyone else or not, not to my
6 knowledge.

7 Q. During that November 11 meeting were there
8 allegations by Ms. Frostenson about Ms. Hammer's
9 misconduct?

10 A. As a general characterization, I would call it
11 questions.

12 Q. Questions about whether she engaged in
13 misconduct?

14 A. That in her mind, in her mind there were
15 questions of misconduct. Misconduct, I would
16 characterize it in that way.

17 Q. Were there any other employees discussed in
18 the November 11 meeting?

19 A. At that time I don't believe so. I don't
20 recall. But I don't recall anyone else being at that
21 time.

22 Q. Do you recall anyone stating that Ms. Hammer's
23 alleged conduct rose to the level of criminal?

24 MR. NAYLOR: Object to the form. At what
25 point?

Page 42

Page 44

1 MR. SWARTZ: In the November 11 meeting.

2 THE WITNESS: I don't recall.

3 Q. (BY MR. SWARTZ) Do you recall at that
4 November 11 meeting a decision being made to have Mayor
5 Willich and Adam King ask Ms. Hammer for her
6 resignation?

7 A. That does not totally characterize it
8 correctly. Could you restate your question.

9 Q. Was there at any time in the November 11
10 meeting any discussions about eliminating Ms. Hammer's
11 employment, whether voluntary or involuntary?

12 A. Yes. But the first part of your question was
13 incorrect, when you said just the council. Mayor
14 Willich was a part of this.

15 Q. So tell me about the discussions about whether
16 to terminate Ms. Hammer's employment.

17 A. After Ms. Frostenson had presented what she
18 had in the council, there were questions from the
19 council. I don't believe I asked any questions.

20 Frankly, on my mind was, What have I just
21 stepped into as mayor? That was my first thought. I
22 have just been elected mayor and suddenly this is all
23 presented. What have I stepped into? That was my
24 thought.

25 Since these were allegations at first when the

1 to do any of the things that the city treasurer
2 considered a violation of City policy.

3 And I felt at that time that was the trigger
4 point to me, that I would go forward to ask for her
5 resignation, because he never came forward and said, I
6 gave her permission to use the car. I gave her
7 permission for flex time. I gave her time off. Had he
8 come forward at that particular time and expressed those
9 thoughts to me, that would have been a game changer for
10 me. I probably wouldn't -- I would not have gone
11 forward and asked for -- I was the last one to concur of
12 the council to ask for her resignation.

13 And that would have been a game changer for me
14 if he would have volunteered at that time, because that
15 would have dispelled to me the whole thing. Not dispel.
16 Because he didn't have authority to void City policy,
17 that would have been a game changer for me.

18 The conversation ensued then to ask for Ms.
19 Hammer's resignation, and then there was discussion as
20 to what the terms should be. Mr. Mayor Willich was
21 adamant that he wanted to ask for three months. He
22 said, I will go forward and ask her for three months.
23 The Council wanted six months. This is my recollection.

24 The Council was adamant, they felt that we
25 should ask for -- pardon me -- remuneration,

Page 43

Page 45

1 council discussed what to do, in my mind I felt they
2 were allegations. And I think I remember the statement
3 that I used, and I said: Well, maybe Ms. Hammer can be
4 just taken, quote, "taken to the woodshed" on this and
5 it can be resolved. I used that exact statement.

6 Q. I'm not familiar with that phrase. What does
7 that mean?

8 A. Maybe it can be corrected without asking for a
9 resignation. I was a little skeptical.

10 Q. Skeptical about what?

11 A. The initial part of it, because it suddenly
12 was just dropped on me, without any thought of what had
13 gone on and being oblivious to it. And then suddenly
14 thinking -- I don't mean to be redundant, but my
15 thoughts were, and I guess I was distracted from some of
16 the conversations because I kept thinking, What have I
17 just stepped into? And I made that statement. And that
18 was repeated by Mayor Willich at one time or another,
19 that Briscoe said that maybe she could be taken...

20 Then as it evolved, I began to feel, yes,
21 there should be an investigation or something should be
22 done from this. The conversation ensued as to the
23 allegations were there. And Mayor Willich, not during
24 that meeting at any time ever volunteered that he had
25 given the city administrator, Sharon Hammer, permission

1 remuneration. And Mayor Willich was adamant that -- he
2 said, Let me handle this. I'm paraphrasing, it may not
3 be exactly accurate. I believe I can handle this with
4 her. Why don't Adam and I go present this to her. I'm
5 sure I can get her resignation. So he was on board.

6 Q. Was there any discussion about just
7 terminating her employment rather than offering
8 resignation?

9 A. Yes, termination. There was something in the
10 conversation, yes. It's hazy now to me as to whether
11 the term termination or resignation -- I'm perhaps
12 interchanging those, interchangeably using those terms,
13 but it was both.

14 But it was my impression at that time that
15 Mayor Willich was totally on board in asking for this,
16 because he had not volunteered any of this information
17 that we found out later. I was the reluctant member to
18 go through the -- the last reluctant member to go
19 through with this, to ask for it.

20 Q. What was your reluctance?

21 A. Because of the seriousness of it and the
22 implications for all involved, the City and the people
23 involved, Ms. Hammer.

24 Q. Can you elaborate on what you mean? The
25 seriousness of the allegations and you felt like

Page 46

1 terminating her employment would not be a good idea.
2 MR. NAYLOR: Object to the form.
3 THE WITNESS: It probably came from my empathy
4 and compassion as being a former medical person.
5 Q. (BY MR. SWARTZ) Did you feel like it would be
6 unfair to terminate her employment?
7 A. No.
8 Q. You felt like that would be okay?
9 A. After I heard it, and it appeared that Mayor
10 Willich was going along with the whole thing, yes.
11 Q. Do you know why a decision was made not to
12 terminate her employment on November 11?
13 A. We couldn't do that. We were in executive
14 session.
15 Q. So the decision then was made to instead just
16 offer her a resignation. If she accepts it, great. If
17 not, you are all going to reconvene on November 14?
18 MR. NAYLOR: Object to the form.
19 THE WITNESS: Mayor Willich, in his mind, was
20 absolutely portraying that he could convince her to take
21 this whole package and leave, that he felt he could
22 resolve it. He wanted the council out of the building.
23 He didn't want the council to have any more contact.
24 Quote, "He was going to handle it with Adam King."
25 Q. (BY MR. SWARTZ) And if she did not accept the

Page 47

1 resignation, was there a plan to reconvene on the 14th
2 to address what steps to take next?
3 A. No. The meeting on the 14th was to hear
4 Mr. Willich tell us what his discussions with Ms. Hammer
5 was. We had no idea. We were totally out of the loop.
6 He didn't want any contact with us. He wanted to handle
7 it alone, so we were out of the loop. So we didn't know
8 until the 14th.
9 Now you are asking a question statutorily? On
10 executive sessions you can't take any action. You would
11 have to come out of executive session to terminate an
12 employee, the city administrator. The mayor would have
13 to recommend it, and then you would need a majority of
14 the full council; and/or the council could terminate the
15 city administrator or an officer with a unanimous vote
16 without the consent of the mayor. So there was certain
17 legal processes that would have to be followed.
18 So the executive session was just a discussion
19 of asking for a resignation with no thought of what the
20 action, in my mind, what it would be when Mayor Willich
21 reported back, because I was under the impression he
22 felt he could work this all out.
23 I was surprised when he reported that it
24 didn't work out, and instead of getting a resignation
25 there were reverse threats of what might happen.

Page 48

1 Q. What do you mean "reverse threats of what
2 might happen"?
3 A. I haven't reviewed those as to what feelings,
4 but I don't recall.
5 Q. But you just felt like Sharon Hammer or
6 someone on her behalf returned fire with threats of
7 something?
8 A. That was my impression, but I don't recall the
9 specifics.
10 MR. NAYLOR: Can we take a break?
11 MR. SWARTZ: Yes.
12 (Recess taken.)
13 Q. (BY MR. SWARTZ) Mayor, do you have anything
14 you need to correct with regard to your testimony that
15 you've given thus far?
16 A. Not at this point. Once I see the transcript,
17 I may have some questions, but at this point I do not.
18 Q. Let's go back to that November 11, 2011
19 meeting when Ms. Frostenson presented the allegations of
20 Ms. Hammer engaging in misconduct regarding flex time
21 and City expenditures.
22 Did any of the council members or the mayor
23 ask Ms. Frostenson why Ms. Frostenson allowed what
24 transpired to take place?
25 A. I don't recall.

Page 49

1 Q. Wasn't it Ms. Frostenson's job to be looking
2 at City expenditures being made by Ms. Hammer?
3 MR. NAYLOR: Object to the form.
4 THE WITNESS: In the context that she is the
5 city treasurer, in that context, in a generalization
6 context.
7 Q. (BY MR. SWARTZ) Was it discussed that the
8 expenditures that were at issue had been approved by the
9 mayor, Ms. Frostenson, a city council member, and the
10 city council at large?
11 A. I don't recall that. But to answer your
12 question again, it's a gross generalization that the
13 implication is that the council went through each and
14 every receipt or something, and so it's a generalization
15 that I can't necessarily concur with.
16 Q. Were there any expenditures that Ms. Hammer
17 was alleged to have made that were improper that were
18 not approved by that process?
19 MR. NAYLOR: Object to the form.
20 THE WITNESS: I don't recall at this time.
21 Q. (BY MR. SWARTZ) Do you recall how far back in
22 time Ms. Frostenson went when presenting her allegations
23 about Ms. Hammer's misconduct?
24 A. I don't know the exact years, but I believe
25 there was a characterization that it was over a several

Page 50

1 year time frame. I believe that was the
2 characterization, but I don't remember specific years
3 being mentioned.
4 Q. Was there any discussion with Ms. Frostenson
5 about why she waited so long to bring these allegations
6 forward if they had transpired over a number of years?
7 A. I don't recall that exactly. Somewhere within
8 the conversation Ms. Frostenson was concerned, had some
9 questions over the audit and her fiduciary
10 responsibility, and that the treasurer at Jerome or
11 Burley or something lost their job over not reporting
12 things or something. Not to that extent, not reporting,
13 I'll take that back. Over some concerns of being
14 treasurer. But this was all new to me and I was hearing
15 it for the first time, trying to absorb quite a few
16 documents that she went through.
17 Q. Do you recall what the documents were that she
18 presented to the council on the 11th?
19 A. I did not see them on paper form. In general
20 they were concerns of vacation time, vacation reporting,
21 maybe a sabbatical, use of City credit cards, use of a
22 City automobile in general.
23 Q. Do you have a recollection of when you came to
24 that meeting on the 11th seeing Sharon Hammer at City
25 Hall in her office?

Page 51

1 A. I don't recall. It seems to me it was a
2 holiday also. I don't remember which holiday. I think
3 it was a holiday. No, I didn't come through the
4 offices. I just came in the door by the mayor's office,
5 which is now the mayor's office, and just ran into the
6 council chambers.
7 I think it was a holiday period. I don't
8 think there were employees in the building. I may be
9 mistaken, but I think it was a holiday. One of the days
10 we met was a holiday.
11 Q. Yeah, it was a holiday, and I'm just curious
12 if you knew if Ms. Hammer was there.
13 A. No.
14 Q. Was there any discussion about asking Ms.
15 Hammer about the allegations, getting her side of the
16 story? Again, just at the November 11 meeting.
17 A. I don't recall.
18 Q. Would you agree with me that getting both
19 sides of the story before taking action would have been
20 reasonable?
21 MR. NAYLOR: Object to the form.
22 THE WITNESS: Define "reasonable." I don't
23 understand reasonable. I can't answer your question.
24 That is a gross generalization of what is reasonable.
25 What is reasonable to one person may not be reasonable

Page 52

1 to another.
2 Q. (BY MR. SWARTZ) What about your definition of
3 "reasonable"? Did you have any concerns about acting on
4 just one side of the story without getting Sharon
5 Hammer's side of the story?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: I think at the executive session
8 we didn't take any action of any kind in the executive
9 session.
10 Q. (BY MR. SWARTZ) The decision was made to have
11 Mayor Willich and Adam King present Sharon Hammer with a
12 request for her resignation; correct?
13 A. After that, yes.
14 Q. After what?
15 A. After the executive session, not during
16 executive session. Maybe there was another session. I
17 haven't looked at the minutes of that meeting. No, I
18 don't think it was unreasonable because Mayor Willich
19 was concurring.
20 Q. Here are the minutes if you need them.
21 (Handing.)
22 A. (Reviewing document.) Well, there are no
23 minutes kept of executive sessions under Idaho law.
24 They are not -- no.
25 MR. NAYLOR: Well, there is the rest of the

Page 53

1 minutes there too.
2 THE WITNESS: (Reviewing document.) No, I
3 don't think it was unreasonable.
4 Q. (BY MR. SWARTZ) And that is because, if I
5 understood you correctly, you believed that Mayor
6 Willich was on board with the conclusion that the
7 allegations merited the termination of Sharon Hammer's
8 employment.
9 MR. NAYLOR: Object to the form.
10 THE WITNESS: Not a sole reason as such, but
11 with his concurrence and his initial suggestion to offer
12 Ms. Hammer three months of salary and ask for her
13 resignation, I concurred.
14 Q. (BY MR. SWARTZ) Who authorized Mayor Willich
15 to offer Sharon Hammer three months of her salary?
16 A. No one authorized him to do that. That was
17 his suggestion.
18 Q. Does the mayor have authority to give an
19 employee money or is that something he's got to get from
20 the city council?
21 MR. NAYLOR: Object to the form; foundation.
22 THE WITNESS: In my experience under Mayor
23 Willich, he acted on his own, without authorization of
24 the council in some areas.
25 Q. (BY MR. SWARTZ) You were in the November 11

Page 54

1 meeting, you have three city council members present and
2 the mayor present, and the decision is made that he's
3 going to offer Sharon Hammer three months of her salary.

4 A. I don't remember as to whether the offer was
5 going to be three months or six months. I don't recall.

6 Q. Regardless, he was going to spend City money
7 to encourage the termination of her employment; right?

8 A. Correct.

9 Q. So where did he get the authority to spend
10 that money?

11 MR. NAYLOR: Object to the form.

12 THE WITNESS: I believe it was a suggestion of
13 the council. I don't know whether it was a resolution.
14 I haven't read the resolution as such of the meeting.
15 That was the suggestion from the council to the mayor as
16 a negotiating point to negotiate, because he was so
17 adamant that he wanted to negotiate this himself, with
18 the authority of the council, to negotiate within some
19 parameters.

20 Q. (BY MR. SWARTZ) The decision of the council
21 to allow him to do that occurred in executive session on
22 the 11th?

23 A. No. No. Decisions are not made in executive
24 session.

25 Q. As I understood Mayor Willich's testimony

Page 56

1 A. (Reviewing document.) The motion, it's public
2 record as to what the motion was. The motion was
3 unanimously approved. And the motion was authorizing
4 the mayor and the city attorney to meet with an employee
5 consistent with what was discussed in executive session.

6 Q. Does it say anything in this public session
7 about offering three or six months severance to an
8 employee?

9 A. No. It says what was discussed.

10 Q. But it doesn't elaborate upon what was
11 discussed in executive session.

12 A. Not in this record.

13 Q. Is there any other public record that you are
14 aware of where the city council authorized the mayor to
15 offer three or six months worth of salary to Sharon
16 Hammer?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: Not that I recall at this time.

19 Q. (BY MR. SWARTZ) So the decision on three or
20 six, or whatever the number was, was made in executive
21 session. You guys come out of executive session and
22 then you say, Okay, now we are going to authorize you to
23 go talk to this employee and deliver what our decision
24 was.

25 MR. NAYLOR: Object to the form; misstates the

Page 55

1 yesterday, the decision was made in executive session,
2 he left executive session with Adam King and went and
3 spoke to Sharon Hammer right then and there at City
4 Hall.

5 MR. NAYLOR: Object to the form.

6 THE WITNESS: I don't recall that. I don't
7 know.

8 Q. (BY MR. SWARTZ) You don't have any
9 recollection of that occurring?

10 A. I know he wanted us out of the building and he
11 wanted to do it totally himself and asked all the
12 council members to leave and not be around, let him
13 pursue it.

14 Q. If Sharon Hammer wasn't in the building, would
15 there be a need for the city council members to leave
16 the building?

17 MR. NAYLOR: Object to the form.

18 Q. (BY MR. SWARTZ) So that he could deliver this
19 offer?

20 A. I don't know.

21 Q. Do you have a recollection of not making this
22 decision in executive session, but doing it in a public
23 session?

24 A. I'd have to review.

25 Q. You have the minutes in front of you.

Page 57

1 testimony.

2 THE WITNESS: No. I would say it was what was
3 discussed. Discussed is different than a decision. The
4 minutes say "discussed."

5 Q. (BY MR. SWARTZ) Do the minutes authorize the
6 mayor to deliver an offer of money to an employee?

7 A. No. The authorization authorizes the mayor
8 and the city attorney to meet. They authorize an
9 employee to meet with an employee consistent to what was
10 discussed.

11 Q. Are you aware of any public record where the
12 mayor was authorized by the city council to spend City
13 money to entice the termination of Sharon Hammer's
14 employment?

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: I don't recall. At this time I
17 don't recall any City record of that.

18 Q. (BY MR. SWARTZ) Was there any discussion of
19 Sharon Hammer's contract in the November 11 meeting?

20 A. Probably, but I don't recall exactly what
21 would be discussed.

22 Q. You are just guessing that it was; you don't
23 have any recollection?

24 A. No.

25 Q. No, you are not guessing; or no, you don't

Page 58

Page 60

1 have any recollection?

2 A. I don't have any recollection.

3 Q. Do you recall who was the first to consent to
4 the decision to offer her severance in exchange for her
5 resignation?

6 A. Please rephrase it again.

7 Q. Do you recall who was the first to consent to
8 the decision to offer her severance in exchange for her
9 resignation?

10 MR. NAYLOR: Object to the form.

11 THE WITNESS: I believe it was a suggestion of
12 Mayor Willich.

13 Q. (BY MR. SWARTZ) To offer her money in
14 exchange for her resignation?

15 A. Yes.

16 Q. Do you recall -- you said you were the last to
17 consent.

18 A. No. I'll rephrase that. I was the last to
19 voice an opinion.

20 Q. Had you ever come to know of Sharon Hammer
21 complaining about Nils Ribi's conduct toward her?

22 A. Would you phrase that.

23 Q. Have you ever come to know of Ms. Hammer
24 complaining about Nils Ribi's conduct toward her?

25 MR. NAYLOR: Object to the form; foundation.

1 didn't know exactly what he was even talking about.
2 Because I knew there was -- Willich had animosity
3 towards Councilman Ribi at that time, so I didn't
4 question it.

5 He mentioned it perhaps several weeks in a
6 row. And I said, What are you referring to? And he
7 said that -- I'm paraphrasing, but he said that there is
8 allegations that he is harassing Sharon Hammer, the city
9 administrator. And at that time I said, Where is this
10 going? What is happening? And he said, Well, when he
11 runs against me -- when he runs against me, I'll kill
12 him with this information.

13 And I think it was probably in the start of
14 the summer, because he didn't know whether he was going
15 to run again or not. It was the start of early summer,
16 late spring when he informed me at one of these meetings
17 he was going to be a candidate and was going to run
18 again. And he again mentioned that Ribi is going to be
19 my opponent.

20 And at that time I said, What is this about?
21 You have alluded several times to Sharon Hammer --
22 harassing Ms. Hammer. And he said, Yes, and he said,
23 When he runs against me, I'm going to kill him with this
24 information. I said, Is this serious? He said, Well,
25 it's serious. I said, Why are you not reporting it now

Page 59

Page 61

1 It's in all the litigation. Are you talking about up to
2 today?

3 MR. SWARTZ: I'm talking about ever.

4 Q. (BY MR. SWARTZ) Do you know that Sharon
5 Hammer while she was employed with the City of Sun
6 Valley made complaints about Nils Ribi's conduct toward
7 her?

8 A. The way you first phrased it, I was -- okay.
9 Yes, by Mayor Willich.

10 Q. When did Mayor Willich make you aware of
11 Sharon Hammer's complaints about Nils Ribi's conduct
12 toward her?

13 A. It was in the spring of -- it was the spring
14 of the election year. What was the election year?

15 Q. 2011? You took office in 2012.

16 A. Yes, 2011. I would usually meet with Mayor
17 Willich on Thursday morning at 10:00, the week before
18 the regular council meeting, to go over the agenda as my
19 duty as council president. And Mayor Willich was
20 concerned as to who might be running against him for
21 election.

22 So in the spring of the year, it could have
23 been late winter, spring, he first mentions that, I
24 think Nils Ribi is going to run against me. And he
25 said, I have some information that will kill him. And I

1 if it's serious? And he said, No. He says, I'll wait
2 until election time. I said, Isn't this obstruction of
3 justice by withholding this information if you think
4 it's serious? And he said, No.

5 Q. When you became privy to Ms. Hammer's
6 complaints about Nils Ribi harassing her, did you do
7 anything to look into those allegations?

8 A. It's not my responsibility or authority to do
9 so under the statutes or otherwise.

10 Q. Did you discuss it with anyone?

11 A. No.

12 Q. Did you discuss it with Nils Ribi?

13 A. No, not at that time.

14 Q. At what time did you discuss it with Nils
15 Ribi?

16 A. When it became public and -- discuss it is a
17 different word. When we were aware of it was when, I
18 believe, Ms. Hammer and Mr. Donoval filed a complaint
19 with the Idaho Human Rights Commission.

20 Q. That is the first time you believe it became
21 publicly known?

22 A. To my knowledge.

23 Mayor Willich had backed off on mentioning
24 this to me, because I think at the start of the summer
25 he said, I found out Nils is not going to run against

Page 62

1 me. And then he turned to me and he said, Are you going
2 to run against me? I said, I might consider it. He
3 says, Well, if you do, I'm going to crank up my machine.

4 Q. So after the November 11 executive session, as
5 I understand it, Mayor Willich and Adam King did ask
6 Ms. Hammer for her resignation and she declined. The
7 council then met on the 14th of November, reconvening
8 from the 11th meeting. Do you recall what transpired at
9 the November 14th meeting?

10 A. I don't totally recall, no, at that meeting.

11 Q. You do have the minutes in front of you if you
12 need to review them. As I understand it, at that
13 meeting and/or in the executive session, it was
14 determined that an investigator would be hired. Does
15 that refresh your recollection?

16 A. Yes, it does.

17 Q. If you recall, whose idea was it to hire an
18 investigator?

19 A. I don't recall exactly which council member it
20 was, or it could have been Mayor Willich.

21 Q. What was the purpose of hiring an
22 investigator?

23 A. To follow up on the material presented by
24 Michelle Frostenson, to take it out of the hands of the
25 City and put it into the hands of an independent person.

Page 63

1 Q. If everybody was following Mayor Willich's
2 lead on the 11th and believed that the allegations
3 against Ms. Hammer were true, is there something that
4 happened between the 11th and the 14th that caused the
5 council to question whether the allegations were true
6 and then resulted in the need to hire an investigator?

7 MR. NAYLOR: Object to the form.

8 THE WITNESS: I don't believe I had any
9 communication with any council people during that period
10 of time or Mayor Willich.

11 Q. (BY MR. SWARTZ) Right. Did something -- I
12 guess I'm trying to figure out what changed between the
13 11th, when in your opinion everybody was following the
14 mayor's lead and the allegations appeared to be
15 allegations that would give rise to the termination of
16 her employment, and the 14th, when it was decided that
17 there would be some investigation into the allegations.

18 MR. NAYLOR: Object to the form; misstates his
19 testimony.

20 THE WITNESS: Well, at least I left the
21 meeting on the 11th convinced from Mayor Willich's tone
22 that he would be able to work with Ms. Hammer and this
23 would all be resolved by the 14th, and we found out that
24 it wasn't resolved. So finding out it wasn't resolved,
25 I believe it was intuitive upon the council to then say

Page 64

1 that there should be an independent investigation.

2 Q. (BY MR. SWARTZ) If you recall, did something
3 come up that caused you to question the veracity of the
4 allegations between the 11th and the decision to hire an
5 investigator?

6 MR. NAYLOR: Object to the form.

7 THE WITNESS: Veracity? What do you mean?

8 Q. (BY MR. SWARTZ) The truth, that perhaps they
9 weren't credible allegations.

10 MR. NAYLOR: Object to the form.

11 THE WITNESS: Ask the question again now that
12 I understand what you mean by "veracity."

13 Q. (BY MR. SWARTZ) As I understand your
14 testimony, the meeting on the 11th you believed, based
15 upon the mayor's conduct at that meeting, that he
16 believed the allegations to be true and that her
17 employment should be terminated; right?

18 MR. NAYLOR: Object to the form; misstates the
19 testimony.

20 THE WITNESS: That he should ask for her
21 resignation. Termination and resignation are two
22 different things.

23 Q. (BY MR. SWARTZ) Termination of employment is
24 just a general --

25 A. I'm not playing semantic games. I want to be

Page 65

1 correct.

2 Q. Absolutely. I want to be on the same page
3 with you as well. The allegations were serious enough
4 and they appeared to be credible enough at the November
5 11th meeting that the decision was made that her
6 employment should come to an end; right?

7 MR. NAYLOR: Object to the form.

8 THE WITNESS: You mean a decision was made --
9 rephrase your question again, please.

10 Q. (BY MR. SWARTZ) Sure. On November 11th, you
11 believed, based upon the mayor's conduct in that
12 meeting, that the allegations against Sharon Hammer were
13 true and that there was reason to bring her employment
14 to an end; right?

15 MR. NAYLOR: Object to the form; misstates his
16 testimony.

17 THE WITNESS: Rephrase it again for me,
18 please, your question. Because you are going back to
19 several questions and interjecting something else, I
20 believe.

21 Q. (BY MR. SWARTZ) So correct me if I'm wrong,
22 but I believe your testimony today, and I'm summarizing
23 it, is that at the November 11th meeting the allegations
24 against Sharon Hammer were serious enough that everybody
25 agreed that her employment should come to an end. And

Page 66

Page 68

1 the way that you all were going to attempt to make that
2 happen was to offer her an opportunity to resign; is
3 that right, generally speaking?
4 MR. NAYLOR: Object to the form; foundation,
5 compound.
6 THE WITNESS: I don't believe I can answer
7 that question yes or no.
8 Q. (BY MR. SWARTZ) Was it determined at the
9 November 11th meeting that Sharon Hammer should be asked
10 for her resignation?
11 A. Yes.
12 Q. Was it based upon the allegations that were
13 presented at that November 11th meeting?
14 A. Yes.
15 Q. And you believe, based upon the mayor's
16 conduct, that he believed the allegations to be true;
17 correct?
18 A. Yes.
19 Q. Now, let's go to November 14th. The council
20 decides to do an investigation into the allegations;
21 right?
22 A. Yes.
23 Q. What transpired between the 11th and the 14th
24 that caused you to believe that the allegations perhaps
25 were not true as you believed them to be on the 11th?

1 Q. The purpose of that investigation, that was
2 solely to determine whether the allegations being made
3 against Sharon Hammer were true or not true?
4 A. No. It was to be an investigation into the
5 financial affairs of the City in general concerning a
6 number of areas.
7 Q. Any employees other than Ms. Hammer that were
8 going to be the subject matter of the investigation?
9 A. I can't say that it was targeted essentially.
10 There might have been others involved -- at that time
11 there could have been other departments involved too.
12 So the parameters for Patty Ball was to start
13 investigating the financial affairs of the City, and
14 wherever that investigation led, she was to follow that
15 lead.
16 So it didn't start out with any preconceived
17 idea of: These facts are all true. That is why you
18 have an independent analysis, to substantiate whether
19 what was presented to council were true and beyond what
20 was presented to the council.
21 Q. Was it your understanding that Patty Ball was
22 being hired because Sharon Hammer was threatening
23 lawsuits?
24 A. Rephrase that again, please.
25 Q. Was Patty Ball -- or the investigator being

Page 67

Page 69

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: That is not true.
3 Q. (BY MR. SWARTZ) What is not true?
4 A. I still, at that particular time I felt the
5 allegations had foundation since Mayor Willich had not
6 given any adverse opinion to us. Mayor Willich seemed
7 dismayed at that meeting that she had not taken his
8 offer.
9 Q. So on the 14th -- sorry, I didn't mean to cut
10 you off.
11 A. He seemed dismayed that she did not take the
12 offer.
13 Q. And then on the 14th you still believed, based
14 upon Mr. Willich's conduct, that the allegations were
15 true.
16 MR. NAYLOR: Object to the form; misstates his
17 testimony.
18 THE WITNESS: No. I felt that an independent
19 investigation should determine whether the things that
20 we were presented were factual and accurate or not.
21 Q. (BY MR. SWARTZ) That was your decision, that
22 was your idea, is that what you're saying; or you were
23 on board with someone else raising that idea?
24 A. It was my idea and I think perhaps other
25 people's as well.

1 retained because Sharon Hammer was threatening lawsuits?
2 A. At that time not in my mind. It was to
3 substantiate the facts and, quote, "just an
4 investigation."
5 Q. You testified earlier today that no other
6 employee other than Sharon Hammer was discussed in the
7 November 11 meetings. What about the executive session
8 on November 14th, was an employee other than Sharon
9 Hammer discussed in that executive session?
10 A. I don't recall.
11 Q. Do you recall any other allegations about any
12 other employees other than Sharon Hammer having engaged
13 in alleged misconduct?
14 A. I don't recall at that time.
15 Q. Do you recall any discussions in executive
16 session at any time regarding any individuals possibly
17 having a bias in light of allegations being made against
18 them by Sharon Hammer?
19 A. Rephrase that again, please.
20 Q. Sure. Was there any discussion about someone
21 perhaps needing to recuse themselves from discussions
22 about Sharon Hammer because of allegations that were
23 being made against them by Sharon Hammer?
24 A. I don't recall that occurring, no.
25 Q. I want to go back to your comment earlier that

Page 70

1 you made about the November 11 meeting. You stated that
2 perhaps she could be taken out to the woodshed. Sharon
3 Hammer could be taken out to the woodshed, and the
4 allegations against her could just be taken care of.

5 I didn't follow up on that comment. I didn't
6 fully understand what you meant by "taking her to the
7 woodshed." Can you elaborate on that?

8 A. Having heard the presentation by the city
9 treasurer the first time and not having seen any of the
10 documents, in my mind I wondered whether there might be
11 some misunderstandings of operation of the City. And I
12 didn't realize that the -- I'm not going to phrase it
13 that way.

14 In the context of whatever misconduct might
15 have occurred, might a discussion be made with Ms.
16 Hammer that could correct the situation in a way that
17 maybe it could be resolved. In my mind I was looking
18 for ways this could be resolved, in my mind at that
19 meeting, could be resolved without going forward with
20 all of the things that had transpired.

21 Q. How did you think in your mind the matter
22 could be resolved?

23 A. I didn't. That is why I just made the thought
24 to the council.

25 Q. Essentially is there a way we can just get rid

Page 71

1 of this thing and I don't have to deal with it as the
2 incoming mayor?

3 A. No, no, that was not in my mind. No, no, not
4 at all. I accepted responsibilities when I was elected
5 mayor and it comes with the territory, so to speak. No,
6 I was thinking of this individual situation, not my
7 present situation as mayor, no.

8 Q. Why would there be interest just to get rid of
9 this situation?

10 A. I didn't characterize it as "get rid of the
11 situation." That would infer you are burying the
12 situation. I didn't mean that at all.

13 I just meant, having been presented -- as I
14 said, I don't mean to be redundant as many times. But
15 having just heard all of this for the first time, it
16 hadn't really -- the implications of it such that
17 could -- could this be corrected internally, whatever
18 had transpired? I had not seen the documents. It was
19 just a thought.

20 Q. That's what "take her to the woodshed" means,
21 is there a way to just end this?

22 MR. NAYLOR: Object to the form.

23 THE WITNESS: Not necessarily end it, because
24 from what was presented that wouldn't end it. Because
25 it would involve the supervision of the mayor, the

Page 72

1 conduct of the mayor, the attitude of the mayor in
2 running the City. It would be quite a few things, and
3 I -- let me phrase it differently.

4 It might be a way of saying, let's give her
5 the benefit of the doubt, in my mind. Then we heard
6 more, and after I heard more, then I went on with the
7 consensus of council. That was, I think, maybe early in
8 the discussion, I'm not sure.

9 Q. After the council decided to retain an
10 independent and fact-finding investigator and you and
11 Mayor Willich, with your joint authority, retained Patty
12 Ball, did you just turn it over to Patty Ball to allow
13 her to conduct her investigation or did you continue to
14 direct her in any way?

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: First of all, we interviewed
17 several people, and then we jointly selected her. And
18 then we came back to the council with the proposal later
19 with a monetary amount that the council then approved.

20 She wanted documents. I think there was a --
21 she wanted a substantial number of documents from the
22 City very quickly. She wanted the policy, the policy
23 manuals. She wanted a lot of things from the City that
24 I think were sent out by Adam King on a very quick basis
25 to her. And then she was to come back with some

Page 73

1 questions as to what she wanted.

2 But the directions that she was given was to
3 investigate the allegations by Michelle Frostenson, in
4 total, and also an investigation into the City as to the
5 operations of the City on vacation times involving other
6 people, to my knowledge.

7 And at that time I didn't have any contact
8 with Patty Ball for some time; in fact, I don't remember
9 having contact with Patty Ball outside of those meetings
10 in Adam King's office.

11 Q. (BY MR. SWARTZ) At any point in time was
12 Patty Ball directed to also investigate Sharon Hammer's
13 allegations of her harassment by Nils Ribi?

14 A. Yes.

15 Q. Was that at the initial engagement of Patty
16 Ball or did that happen after the fact?

17 A. I don't recall whether it was initially or
18 after the fact. It probably was initially in the
19 whole -- in everything that she was to be interviewing
20 people for.

21 Q. So you think you and Mayor Willich both
22 decided at the initial meeting with her where you all
23 set out the parameters that that would be a topic of the
24 investigation as well?

25 A. I don't recall exactly at that time, no.

Page 74

1 Q. But at some point it did become a topic of the
2 investigation?

3 A. Yes.

4 Q. Do you know why it became a topic of the
5 investigation?

6 A. I don't know the time frame, whether
7 complaints had been made to the Human Rights Commission
8 of Idaho, the Idaho Human Rights Commission. I don't
9 exactly recall the time frame on that. But it was all
10 within her initial report and her initial
11 responsibilities to investigate. It was all part of the
12 package she was supposed to look at.

13 Q. Open up your binder to tab 3, SH-TIMELINE 8
14 through 12, it's a November 12, 2011 letter from James
15 Donoval and you are cc'd as a recipient. Do you see
16 that on page 12? Do you recognize this November 12th,
17 2011 letter?

18 A. I haven't seen it in several years. I'm
19 seeing it now for the first time in several years. I
20 haven't reviewed it.

21 Q. I'm just going to ask you generally whether
22 the second page of that letter, which refers to
23 Mr. Ribí's conduct toward Ms. Hammer, perhaps refreshes
24 your recollection whether you asked Patty Ball to
25 include these allegations in her investigation.

Page 75

1 A. I don't believe she was supposed to
2 investigate possible behavior and harassment. I don't
3 recall anything that she was supposed to be looking into
4 Mr. Ribí's retribution.

5 Q. Would the harassment that is referred to in
6 here and Mr. Donoval saying, Hey, Mr. Ribí is taking
7 action against Ms. Hammer because she's reported him for
8 harassing her, I'm just wondering -- you had that
9 information at the time you retained Patty Ball. I'm
10 wondering if that refreshes your recollection as to
11 whether you asked Patty Ball to include these
12 allegations in her investigation.

13 A. Yes, to investigate allegations of harassing
14 behavior, but not to investigate whether Mr. Ribí was
15 seeking retribution in any way.

16 Q. Thank you for that clarification.

17 THE WITNESS: I'm going to need a very quick
18 break. I don't need to meet with counsel or anything.

19 MR. SWARTZ: That would be fine.
20 (Luncheon recess taken.)

21 Q. (BY MR. SWARTZ) Mayor, you are still under
22 oath. We are just coming back from our lunch break.

23 You've had a chance to think about your
24 testimony from this morning, I'm sure. Do you have
25 anything that you need to correct or add to?

Page 76

1 A. No, not at this moment.

2 Q. Earlier I was asking you about any perceived
3 performance issues that you had of Sharon Hammer. Now
4 what I'm going to ask about is whether she engaged in
5 any behavior that you felt like was tantamount to
6 misconduct. And I'm talking about the period of time
7 while you were a council member and when you became
8 mayor before the termination of her employment.

9 A. You mean like personal demeanor?

10 Q. Just any misconduct, misconduct and misuse of
11 City funds or mistreatment of employees or anything
12 along those lines.

13 A. No, because Mayor Willich had built a Berlin
14 wall between the council and the administration of the
15 City. I never really felt welcome going into the City.

16 Q. Did you say "Berlin wall"?

17 A. Yes. He made it very clear that there was
18 this entire separation between the administration and
19 the council. I never really felt that welcome going in
20 as a council person.

21 Q. Once you --

22 A. This does not reflect on Ms. Hammer. Ms.
23 Hammer was always very pleasant and very courteous.

24 Q. To you?

25 A. Yes.

Page 77

1 Q. Once you took office, did you observe or come
2 to know Ms. Hammer having engaged in any behavior that
3 you felt like was misconduct?

4 A. Only after I became mayor or before?

5 Q. I asked about before.

6 A. Rephrase that, please.

7 Q. So any time were sitting as a city council
8 member or after you took office as mayor, but before
9 Sharon was terminated, that is the period of time I'm
10 asking about.

11 A. Yes.

12 Q. During that period of time, did ever know of
13 Ms. Hammer engaging in any conduct that you believed was
14 misconduct?

15 MR. NAYLOR: Object to the form.

16 THE WITNESS: I was startled by some letters
17 that City Administrator Hammer sent out around the 27th
18 or 28th of December while the council was on break. One
19 letter that caught my attention certainly was a letter
20 that she sent in regards to, I think it was entitled
21 something about termination of employees, termination of
22 officials or something.

23 And her letter had laid the background in the
24 first page or two that the mayor would not be able to
25 break a tie in the event of a tie vote for termination

Page 78

Page 80

1 of a City employee. And then she followed it up with a
2 paragraph in which she stated that she was the complete
3 authority and the interpreter of all City policies, and
4 neither the city attorney, the council or the mayor
5 could question or overrule her interpretation of the
6 policies.

7 I felt that that was well beyond -- I didn't
8 know where that was coming from or why she suddenly
9 raised that issue. I think that maybe Ms. Hammer
10 perhaps anticipated that there might be some vote of the
11 council for termination at some time or maybe she
12 anticipated a tie, which she did a preemptive strike to
13 try to preclude the mayor from breaking a tie with a
14 legal interpretation I did not agree with.

15 Q. (BY MR. SWARTZ) You felt like the sending of
16 that memo was misconduct?

17 A. Yes.

18 Q. Anything else that you believe was misconduct
19 engaged in by Sharon Hammer?

20 MR. NAYLOR: Object to the form.

21 THE WITNESS: During the term that Mayor
22 Willich brought Ms. Hammer back from paid administrative
23 leave and during that time with the litigious atmosphere
24 that probably was existing at that time, there was a
25 concern on my part about the -- I don't want to use the

1 pertaining to wanting to investigate the PERSI accounts,
2 wanting to investigate -- something raised the question
3 in my mind, Well, she was in charge of the treasurer,
4 she was in charge of all these things. Why is she
5 suddenly demanding an investigation now when she's been
6 in charge of the operation for the City for three years?

7 Q. So were all the memos --

8 A. They were all sent on the same day. I got
9 them all e-mailed the same day.

10 Q. And all three memos then are what you --

11 A. Four, there might have been four, three or
12 four.

13 Q. All of those memos, regardless of how many
14 there were, you believe they were misconduct on Ms.
15 Hammer's part?

16 MR. NAYLOR: Object to the form;
17 mischaracterizes his testimony. You've used the word
18 "misconduct." He hasn't.

19 THE WITNESS: I haven't used the word
20 "misconduct." I would call it "questionable activity."

21 Q. (BY MR. SWARTZ) Why is it questionable?

22 A. For the reasons that I stated. Why was
23 Ms. Hammer going to anticipate that there might be a tie
24 vote and so she's doing a preemptive strike to prevent
25 the mayor in breaking a tie vote?

Page 79

Page 81

1 word "safety," but City records.

2 I was startled when I became mayor and I asked
3 about passwords of David Blampied, who was a
4 receptionist, and he just pulled out a Rolodex sitting
5 on his front desk, and he said, Here's all the passwords
6 for all the employees of the City. I felt that was
7 certainly a lack of control of security within the City.
8 That is my recollection at the moment.

9 Q. (BY MR. SWARTZ) So the misconduct that you
10 believe you became aware of before the termination of
11 Ms. Hammer's employment was the December 27 memo on her
12 ability to interpret the policies?

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: Please rephrase the question.
15 Sorry.

16 Q. (BY MR. SWARTZ) Well, I'm going to run
17 through these three things and make sure I've captured
18 your testimony appropriately.

19 You cited three different things that you've
20 characterized as misconduct that you became aware of and
21 that you believe Ms. Hammer engaged in before the
22 termination of her employment. One, the December 27
23 memo. Two --

24 A. December 28th, I believe I got it on the 29th,
25 but those dates, yes. There were three other memos

1 MR. SWARTZ: This is under tab 14, Kirt.

2 Q. (BY MR. SWARTZ) I think these are the memos
3 you are talking about, but let's just run through them
4 real quick.

5 The first one is Hammer 406 through 409. Take
6 a moment to review that and let me know when you are
7 done.

8 A. (Reviewing document.) I don't really recall
9 at this time my recollection of reading this several
10 years ago.

11 Q. So maybe this isn't one of them. Let's have
12 you turn back in this book.

13 A. I was on vacation and out of the City during
14 this period of time, trying to get what I could from
15 e-mails.

16 Q. All right. Now we are looking at SH-TIMELINE
17 465 and 466.

18 A. Yes. I believe it came on my computer on
19 December 29, so my computer says December 29 rather than
20 27, so I wanted to --

21 Q. Okay. Is this one of the memorandum that you
22 received from Sharon that you believe was questionable
23 conduct?

24 A. Yes.

25 Q. What is questionable about this memorandum or

Page 82

1 her conduct in sending it?

2 A. She's reaching a legal opinion, and she's not
3 a licensed attorney in Idaho and she's not a City
4 attorney. She's using it to say as a conclusion, as a
5 city administrator, I do this.

6 I think she has -- yes, I believe she uses the
7 analysis that the mayor breaking a tie, that since the
8 legislature, the legislative statutory intent did not
9 put in the legislation that the mayor could break a tie,
10 her interpretation is, therefore, the mayor can't break
11 the tie.

12 My legal advice to me is it's reversed, is
13 that the statutory intent specifically states several
14 circumstances which the mayor cannot break a tie. So I
15 felt she was using her position as city administrator to
16 make a legal interpretation.

17 Q. And you felt like that was improper.

18 A. Yes. That should have been up to the city
19 attorney.

20 Q. Now, we are looking at SH-TIMELINE 467.

21 MR. NAYLOR: Is there a question?

22 Q. (BY MR. SWARTZ) Have you had a chance to
23 review it? My question to you, Mayor, is going to be
24 whether this is one of the memorandum that you received
25 that you believed was improper for Sharon to send.

Page 83

1 A. (Reviewing document.) The last paragraph I
2 would question as to why, given the discrepancy of my
3 accruals, a full and complete audit of not only my
4 account but the accounts of all City civilian employees
5 must be conducted immediately.

6 It was a demand being sent to the mayor
7 because she felt there was some problems with hers, that
8 the whole City should be audited, all employees should
9 be audited.

10 Q. You felt like that was inappropriate.

11 A. Well, I questioned it because essentially as
12 the city manager during that time, she was in charge of
13 the treasurer and whatever else was going on, so why
14 would she be demanding an audit of her own conduct.

15 Q. It looks like there is a couple other memos
16 during that period of time and they didn't make it in
17 the binder, but this one is SV 281. Same question,
18 whether that is another one of those memos you felt like
19 was inappropriate for Sharon to send.

20 A. Yes. It's the last paragraph again that
21 caught my attention. Given the discrepancy of my
22 deposits, a full and complete audit of not only my
23 account, but the accounts of all City employees must be
24 conducted immediately.

25 So in various areas that she is a city

Page 84

1 administrator is demanding of the mayor that he conduct
2 full audits of all of these areas. And I think Mayor
3 Willich's testimony yesterday was that he did not, he
4 dismissed it.

5 Q. This one is SC 274. Is that another
6 memorandum that you would include in your grouping of
7 memorandums that you felt like were inappropriate for
8 Sharon to send?

9 A. Yes, because of, again, the last sentence,
10 last paragraph. Given the discrepancy in my accruals, a
11 full and complete audit of not only my account but the
12 accounts of all City of Sun Valley employees must be
13 conducted immediately.

14 In essence, the summation of these is she's
15 asking for an immediate and thorough auditing
16 essentially of many, many accounts within the City.

17 Q. What is wrong with asking for an audit of
18 accounts?

19 MR. NAYLOR: Objection; asked and answered.
20 Go ahead.

21 THE WITNESS: I didn't say it was wrong. I
22 don't believe I used that word.

23 Q. (BY MR. SWARTZ) Inappropriate.

24 A. Yeah. Well, I can only concur with Mayor
25 Willich and his testimony yesterday, that he didn't feel

Page 85

1 that any of this was necessary and didn't do it.

2 Q. Well, I think what he said yesterday was there
3 wasn't time in the remaining of his term to deal with
4 it, so he just put it to the side. Your recollection
5 may be different.

6 Okay. You talked about the litigious
7 atmosphere as being another --

8 A. Let's go back to the basic, the first
9 question, so I'm clear. We've gone through a number of
10 things. So you started with a basic premise question.
11 I'd like to have that clarified.

12 Q. Absolutely. I was asking you what misconduct
13 you became aware of as a city council member or as mayor
14 that you believed Sharon Hammer had engaged in before
15 you terminated her employment. We covered the memos.

16 Your second point was a litigious atmosphere.
17 That is what I want to ask you about now, what you meant
18 by that.

19 A. I would question her attorney husband being in
20 our offices of the City of Sun Valley after office hours
21 during the time of the vacation. With the litigious
22 nature of what was transpiring and the letters we had
23 received, I would not expect that he would have been
24 allowed access to the City, the City computer, the City
25 offices during that time.

Page 86

1 Q. Did you observe him in City Hall?
2 A. No.
3 Q. Why do you believe he was in City Hall?
4 A. Because we have an affidavit from a citizen
5 who is an attorney that states in effect, that he came
6 in and there was very few people there and he rang the
7 bell, and Mr. Donoval actually came out of one of the
8 inner offices to come out to the desk.
9 Q. Who is the citizen?
10 A. I can recollect the name at a later time.
11 He's now a retired attorney, practiced in Idaho Falls.
12 He just got an award from the Idaho Bar Association for
13 70 years of law practice. I don't recollect his name
14 right now, and he's African American.
15 Q. What was he going to the City for, do you
16 know?
17 A. I don't know. I don't know. All I became
18 aware of is an affidavit to that effect. An affidavit
19 or a statement, I'm sorry, I don't have a copy of it.
20 Q. How was it presented to you?
21 MR. NAYLOR: How was what presented?
22 Q. (BY MR. SWARTZ) The affidavit or statement.
23 A. I never saw it. It was relayed to me.
24 Q. Who relayed it to you?
25 A. I don't recall at that time.

Page 87

1 Q. Anything else about point number two that you
2 can recall?
3 A. What is the point number two?
4 Q. The litigious atmosphere, Mr. Donoval being in
5 City Hall offices. We are still covering the items of
6 misconduct that you believe Sharon Hammer engaged in and
7 that you were aware of before --
8 A. Inappropriate conduct, not necessarily
9 misconduct. What I've mentioned may be inappropriate
10 conduct also.
11 Q. So misconduct or inappropriate conduct is what
12 we are covering.
13 A. Yes.
14 Q. Anything else on point two?
15 A. I don't recall at this time, no.
16 Q. And then point number three that you raised
17 was David Blampied having the passwords in a Rolodex.
18 A. Yes.
19 Q. That is inappropriate conduct or misconduct
20 that you attribute to Sharon Hammer?
21 A. It's lack of institutional control.
22 Q. Do you know if Sharon Hammer knew that David
23 Blampied had passwords in a Rolodex?
24 A. Everyone knows it's here. I had asked about
25 changing passwords for people, and that was what he

Page 88

1 responded. He pushed this out and he said, Here's all
2 the passwords of all the employees.
3 Q. He told you that Sharon Hammer knew that he
4 had a Rolodex of all the passwords?
5 A. He did not state that directly.
6 Q. Any other inappropriate conduct or misconduct
7 that you were aware of before you terminated Ms.
8 Hammer's employment?
9 A. Not at this time.
10 Q. Earlier we spoke about why you placed Ms.
11 Hammer on administrative leave when you took office, and
12 you stated that it was upon advice of council. Let me
13 have you turn to --
14 A. And there may have been other.
15 MR. SWARTZ: Kirt, tab 17.
16 THE WITNESS: I don't believe -- in thinking
17 about it, I don't believe that the Patty Ball report
18 was, or the investigation had been given to the council
19 at that time either.
20 Q. (BY MR. SWARTZ) Okay. So I'm just having you
21 look at your affidavit. Go ahead and take a moment to
22 review that and let me know when you are done.
23 A. We are looking at five, six pages. I haven't
24 seen this in some time.
25 Q. Sure. That is why I'm asking you to take a

Page 89

1 moment. It's Hammer 566 through 569.
2 A. (Reviewing document.) That was my
3 recollection at the time, at the time the affidavit was
4 signed.
5 Q. Having had a chance to review it, do you see
6 anything in your affidavit that appears to be inaccurate
7 to you as you sit here today?
8 A. Not on a cursory glance at it, no.
9 Q. Do you want to take more time to review it?
10 A. Yes.
11 Q. Please do.
12 A. (Reviewing document.)
13 What is your question, sir?
14 Q. Is your affidavit accurate?
15 A. I believe it to be accurate at the time when I
16 wrote it.
17 Q. Do you believe it to be accurate as you sit
18 here today?
19 A. I would not change anything at this time. I
20 might go back and investigate some of the statements
21 that were there and look at documents, but at this
22 particular time, yes.
23 Q. What would you investigate?
24 A. I don't know. I didn't say I would
25 investigate something. You asked me a question, if --

Page 90

1 rephrase your question and I want to rephrase my answer.
2 Q. I just am asking you whether this affidavit is
3 accurate as you sit here today.
4 A. Yes, I believe it to be accurate as I sit here
5 today.
6 Q. On page 3, paragraph 10 you itemize a number
7 of things that led you to place Ms. Hammer on leave. Do
8 you see those bullet points there?
9 A. Yes.
10 Q. The first is the Ball report. What about the
11 Ball report caused you to place Ms. Hammer on leave?
12 A. (Reviewing document.) The whole thing or
13 paragraph 10?
14 Q. So paragraph 10, first bullet point is the
15 first thing that you cite as a basis for your decision
16 to place Ms. Hammer on leave. Do you see that?
17 A. Yes.
18 Q. What about the Ball report led you to your
19 decision to place Ms. Hammer on leave?
20 A. Because the Ball report was still in progress
21 and hadn't been approved by the council or seen by the
22 council yet.
23 Q. You had read the Ball report by January 9;
24 correct?
25 A. Yes.

Page 91

1 Q. Was there anything in that report that led you
2 to place Ms. Hammer on leave?
3 MR. NAYLOR: Object to the form.
4 THE WITNESS: My statement is the Ball report
5 in general, that it was still in the process of being
6 reported and completed. So I didn't enumerate anything
7 in the Ball report in this affidavit of mine. I didn't
8 list anything out of the Ball report at that time.
9 Q. (BY MR. SWARTZ) Your affidavit also doesn't
10 say, my decision to place Ms. Hammer on leave was
11 because the Ball report was still pending; correct?
12 A. Yes.
13 Q. It just simply says "the Ball report"; right?
14 A. Yes. Ballpark statement.
15 Q. The second bullet point you state is that your
16 decision to place Ms. Hammer on leave was that
17 information had come to you about Ms. Hammer retaliating
18 toward persons who provided information to Investigator
19 Ball. Do you see that?
20 A. Yes.
21 Q. As the mayor if you became aware of one
22 employee retaliating against another employee, would you
23 consider that retaliation to be a terminable offense?
24 MR. NAYLOR: Object to the form.
25 THE WITNESS: Rephrase your question.

Page 92

1 Q. (BY MR. SWARTZ) Sure. If one of the City
2 employees retaliated against another City employee,
3 would you consider the employee who did the retaliation
4 an employee who should be terminated?
5 MR. NAYLOR: Object to the form.
6 THE WITNESS: I think there would have to be
7 some specific example of that. I can't make a
8 generalization statement on that, because there are
9 federal laws and state laws and retaliatory behavior of
10 whistleblowers and things, which I'm not totally up to
11 speed on. And I don't know the federal or state laws at
12 this time on terminating employees for retaliatory
13 behavior, so I really can't answer that question in that
14 form.
15 Q. (BY MR. SWARTZ) The retaliation that you are
16 referring to in the second bullet point, was that
17 retaliation that you felt like could give rise to
18 terminating Ms. Hammer's employment?
19 MR. NAYLOR: Object to the form.
20 THE WITNESS: I still don't understand your
21 question as to how to answer it.
22 Q. (BY MR. SWARTZ) You are stating that Ms.
23 Hammer retaliated against a City employee.
24 A. I said the information had come to me.
25 Q. When you learned that Ms. Hammer is

Page 93

1 retaliating against a City employee, did you think that
2 was acceptable or unacceptable?
3 MR. NAYLOR: Object to the form.
4 THE WITNESS: I felt it was unacceptable, but
5 not necessarily grounds for retaliation, because I said
6 I'm not familiar with the federal and state laws on
7 retaliation or whistleblowers.
8 MR. NAYLOR: You mean grounds for termination?
9 THE WITNESS: Yes.
10 Q. (BY MR. SWARTZ) The third bullet point down
11 you state that a reason you placed Ms. Hammer on leave
12 was that she accessed e-mail accounts for two of the
13 investigation witnesses, do you see that?
14 A. Yes.
15 Q. And I'm paraphrasing, Mayor.
16 A. So what is the question?
17 Q. I'm just asking whether you see that bullet
18 point.
19 A. Yes, I see the bullet point.
20 Q. Did you feel like that was acceptable or
21 unacceptable conduct?
22 MR. NAYLOR: Object to the form.
23 THE WITNESS: Unacceptable.
24 Q. (BY MR. SWARTZ) Who did you learn this
25 information from?

Page 94

1 A. I don't recall at the time. It may have been
2 Kelly Ek, it may have been Michelle Frostenson. I don't
3 know at the time.
4 Q. How did you learn about the retaliation that
5 Ms. Hammer was engaging in with these other employees?
6 A. Verbal accounts given to me by the employees.
7 Q. Who are the employees?
8 A. I believe Kelly Ek. I would think, I may be
9 mistaken, but at this time I would think it probably was
10 Kelly Ek and/or Michelle Frostenson.
11 Q. Back to the e-mail account paragraph. If Ms.
12 Hammer had allowed these e-mail accounts to be placed on
13 the server and jeopardized confidential information or
14 attorney-client privileged materials, is that something
15 you would have terminated her employment for?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: You mean terminate her on the
18 spot at that exact time? No.
19 Q. (BY MR. SWARTZ) Just terminate her
20 employment; is that a terminable offense?
21 MR. NAYLOR: Same objection.
22 THE WITNESS: By itself in singularity, I
23 don't think so.
24 Q. (BY MR. SWARTZ) How about paired together
25 with retaliating against City employees?

Page 95

1 MR. NAYLOR: Objection; form, calls for
2 speculation.
3 THE WITNESS: I don't recall.
4 Q. (BY MR. SWARTZ) Let's move on down to the
5 fourth bullet point. There you are saying that Ms.
6 Hammer accessed confidential attorney-client privileged
7 materials and divulged those to her husband/attorney
8 James Donoval; right?
9 A. Yes.
10 Q. Is that acceptable or unacceptable?
11 A. Unacceptable.
12 Q. Is it a terminable offense?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: In singularity, possibly, but in
15 summation of a whole, it could be included in a
16 summation of a whole and be grounds for dismissal.
17 Q. (BY MR. SWARTZ) How did you learn that Ms.
18 Hammer accessed confidential attorney-client privileged
19 materials and divulged those materials to her husband?
20 A. I saw an e-mail, which I have not been able to
21 locate at the time, that was sent by Mr. Donoval, I
22 believe it was sent to Mr. Naylor, that he had access to
23 city materials from the city attorney and that he could
24 prove there was a conspiracy to terminate Ms. Hammer
25 between Kelly Ek and Counselman Ribi and Adam King. It

Page 96

1 was an e-mail from Mr. Donoval essentially admitting
2 that he had been able to access confidential
3 attorney-client privileged material off city computer
4 terminals, and that he had proof that a conspiracy
5 existed with those three individuals to terminate Sharon
6 Hammer.
7 Q. Were you concerned at all about a conspiracy
8 going on?
9 MR. NAYLOR: Object to the form.
10 THE WITNESS: I don't believe there was a
11 conspiracy.
12 Q. (BY MR. SWARTZ) Why is that?
13 A. I wasn't apprised of any conspiracy. I had no
14 knowledge, I hadn't talked to any of these people. I
15 don't know whether they met, didn't meet.
16 Q. After you received the e-mail from Jim Donoval
17 that stated there was a conspiracy going on, did you do
18 anything to look into it?
19 A. Did I personally do anything?
20 Q. Yes.
21 A. No.
22 Q. Did you ask anyone else to look into it?
23 A. I believe I may have consulted with
24 Mr. Naylor, is my recollection at the time.
25 Q. The fifth paragraph down, you can read it in

Page 97

1 full, but you state essentially that you asked Ms.
2 Hammer to return materials to the city and that you
3 believed she did not return materials and that she was,
4 in fact, still in possession of materials. Do you see
5 that bullet point?
6 A. Yes.
7 Q. Is that acceptable or unacceptable?
8 A. That is acceptable.
9 Q. Sorry?
10 A. That is acceptable.
11 Q. That is acceptable that she kept materials?
12 A. Yes.
13 Q. Why was that a basis for you to place her on
14 administrative leave?
15 A. Because according to her, Chief Daggett was
16 supposed to receive this information from her, and there
17 was a list of things for her to return, and she attached
18 a letter to that that she was withholding city
19 documents, that she was withholding -- she was going to
20 withhold original city documents because she felt they
21 were attorney-client privileged for her attorney and
22 her.
23 There may have been documents, there may have
24 been billing records for Adam King, there may have been
25 billing records for Patty Ball. I don't recall at this

Page 98

Page 100

1 time what they were. But in her letter she said she was
2 excluding those and not returning those.

3 I don't know how to phrase it. I don't have
4 her letter that she attached when she returned this to
5 Chief Daggett. I haven't read that in several years
6 now, but that was the summation. And I immediately --
7 that was given to Mr. Naylor and possibly to Adam King.

8 Q. If she engaged in acceptable behavior in not
9 returning materials that you specifically told her to
10 return, why would you cite that as a basis to place her
11 on administrative leave?

12 MR. NAYLOR: Object to the form.

13 THE WITNESS: Please rephrase that again.

14 Q. (BY MR. SWARTZ) So you are citing this
15 paragraph, her failure to return property that you
16 specifically told her to return, you are citing that as
17 a reason why you placed her on administrative leave;
18 right?

19 A. Yes. Well, if she was in a position of taking
20 documents from the City and giving them to her
21 attorney/husband, I believe placing her on
22 administrative leave so she wouldn't be able to do that
23 any further was warranted, as part of the whole
24 summation.

25 Q. That would be the inappropriate or

1 to me and said, I want to be on paid administrative
2 leave. I want to go away too because there is a
3 poisonous atmosphere here. I had employees coming to me
4 asked to be on paid administrative leave to get out of
5 there.

6 Q. (BY MR. SWARTZ) You attributed their request
7 for that paid administrative leave to Sharon Hammer's
8 creation of a hostile work environment?

9 MR. NAYLOR: Object to the form.

10 THE WITNESS: Again, I'll say perhaps it was
11 by her presence in the building.

12 Q. (BY MR. SWARTZ) Who are the two critical City
13 employees?

14 A. Are critical of what? Let me backtrack. What
15 are we talking about?

16 Q. You state in your affidavit that there were
17 two critical City employees who reported Ms. Hammer
18 creating a sense of hostility.

19 A. I think by her presence. And David Blampied
20 was one, where he refused to communicate with the
21 treasurer or the city clerk. And there are other
22 employees that -- essentially in my mind, the City was
23 becoming suddenly dysfunctional in regards to
24 cooperation between employees.

25 Q. Mayor, I'm asking you to identify the two

Page 99

Page 101

1 unacceptable behavior.

2 A. Yes.

3 Q. And you were trying to stop that.

4 A. Yes.

5 Q. Next bullet point down you state her presence
6 at work created hostility reported by at least two
7 critical City employees. Do you see that?

8 A. Yes.

9 Q. So this is the second account of hostility
10 that Ms. Hammer is creating with City employees that you
11 list in your affidavit; right?

12 A. Either creating or just creating by her
13 presence.

14 Q. And if she is creating hostility with two
15 critical City employees, is that acceptable or
16 unacceptable behavior?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: Yes, I believe -- the City was
19 really divided into two camps. I term it that way when
20 I came into office. Those that supported former Mayor
21 Willich in the last election and those that supported
22 Sharon Hammer, and those perhaps that maybe had
23 supported me in some way. There was an obvious
24 poisonous atmosphere. I say "poisonous atmosphere"
25 because it was reported to me by two employees that came

1 critical City employees that you are referring to.

2 A. That was Michelle Frostenson and Kelly Ek
3 and -- no. Yes.

4 I had two employees come to my office and tell
5 me they were going to quit if Sharon Hammer wasn't
6 brought back and all this was resolved. And the third,
7 the city clerk apparently was locked out of her office
8 for a period of time.

9 Q. Hang on a second, Mayor. Can you identify the
10 two critical City employees?

11 A. Yeah, I believe Kelly Ek and I believe
12 Michelle Frostenson. At this time that is what I
13 remember, at this time.

14 Q. Thank you. And when you were answering that
15 before you said, and one of them was David Blampied and
16 he wouldn't communicate with the city clerk.

17 A. Yes.

18 Q. Is that something that you attributed to
19 Sharon Hammer?

20 A. Administration of the City -- because I found
21 out that David Blampied had a master key to Kelly Ek's
22 offices and Michelle Frostenson's offices, which I felt
23 would be inappropriate administration of the City, and
24 both employees had mentioned they felt that things had
25 been rearranged on their desk and it wasn't as they left

Page 102

1 it at noon or left it at night.
2 And I questioned David Blampied as to why he
3 had a master key, just being the city clerk. It was my
4 understanding that only the police chief had a master
5 key, and perhaps the mayor and maybe the city
6 administrator.
7 And he just said, Well, it's easier for me to
8 just go into their offices and put things on their desk
9 rather than putting them in their box, which didn't seem
10 plausible to me.
11 Q. That is conduct that you attributed to Sharon
12 Hammer?
13 A. David Blampied worked under the city
14 administrator, Sharon Hammer. He took his
15 responsibilities and instructions from her.
16 Q. So that would be another failure of Sharon
17 Hammer to perform her job appropriately?
18 A. Yes. To allow a receptionist to have a pass
19 key, a master key.
20 Q. Let's go back to the last bullet point on that
21 page 3. You state that she, Sharon Hammer, allowed the
22 city clerk to be a locked out of her office for a period
23 of time. Do you see that?
24 A. Yes.
25 Q. How do you know that Sharon Hammer allowed the

Page 103

1 city clerk to be locked out of her office for a period
2 of time?
3 A. It occurred on her watch. She's the
4 administrator, she's responsible for the City.
5 Q. Who had the locks changed on the office doors?
6 A. I don't know. I don't recall.
7 Q. That wasn't during your administration?
8 A. Yes. We changed it during my administration,
9 yes.
10 Q. So when you became mayor, you had all the
11 locks changed on the doors?
12 A. Yes. We had pass keys changed, we had --
13 Q. Is that when the city clerk was locked out of
14 her office?
15 A. No. The city clerk -- no, the city clerk was
16 locked out of her office for a period of time after she
17 returned to work. I believe it was actually during the
18 time that -- actually before I was mayor.
19 During that period of time when Mayor Willich
20 brought Administrator Hammer back to work over that
21 Christmas vacation period, I think that is when the city
22 clerk told me that that had occurred.
23 Q. That was going to be my next question. How
24 did you learn this transpired? So Kelly Ek must have
25 told you?

Page 104

1 A. Yes.
2 Q. If Sharon Hammer locked Kelly EK out of her
3 office, would that be appropriate or inappropriate
4 behavior?
5 A. It would be inappropriate.
6 Q. Would it be a terminable offense?
7 A. Not in singularity, but perhaps in summation
8 combined with other things.
9 Q. Next page, page 4, you state you placed Ms.
10 Hammer on leave because she allowed e-mails of persons
11 who presented information in the investigation to be
12 deleted. Do you see that there?
13 A. Yes.
14 Q. How did you learn about that?
15 A. Kelly Ek came to me crying saying that all of
16 her personal e-mails and things had been deleted off of
17 her information. And apparently she reported that Tammy
18 Hall, as I recall, who was working in the office at that
19 time, had deleted information off her computer and she
20 was really distressed.
21 Q. And in your affidavit you attribute the
22 deletion of those e-mails to Sharon Hammer; right?
23 A. No. I'm not saying Sharon Hammer did it. I
24 said it happened under the administration of Sharon
25 Hammer, when Sharon Hammer was the administrator of the

Page 105

1 City, and it was her responsibility to control all these
2 things.
3 Q. Right. You state that she allowed the e-mails
4 to be deleted; right?
5 A. It occurred. I would doubt that these
6 individuals would have done it without her permission.
7 As a singular act, I don't have proof of that.
8 Q. Assuming your belief is accurate, would that
9 be appropriate or inappropriate conduct by Ms. Hammer?
10 A. Inappropriate.
11 Q. Would it be a terminable offense?
12 A. Not in singularity, but perhaps in summation
13 with other factors.
14 Q. Next bullet point you are referring to Ms.
15 Hammer allowing her attorney into the back offices of
16 City Hall. Do you see that there?
17 A. I believe I covered that.
18 Q. Well, it's an another bullet point. I'm just
19 I'm going bullet point by bullet point. Was that the
20 same incident as the situation where your citizen
21 provided you with a statement?
22 A. The statement wasn't provided to me, but the
23 statement was provided that I saw. Perhaps I never saw
24 it, but it was read off to me.
25 Q. So do you think this second-to-the-last bullet

Page 106

1 point is --
2 A. Consistent with what other bullet point,
3 Mr. Swartz? Consistent with which bullet point?
4 Q. You stated that you think you have already
5 covered this bullet point. It's the first time we have
6 read it together, this is the first time I'm asking you
7 about it.
8 A. Then I mentioned it in the context of another
9 bullet point. I pre-answered the question in another
10 bullet point then.
11 Q. In the last bullet point, Mayor, you state
12 that after returning to work she spent at least some
13 time drafting and delivering communications related to
14 her lawsuits against the City and its officials. Do you
15 see that?
16 A. Yes.
17 Q. Do you believe that to be appropriate or
18 inappropriate conduct?
19 A. I believe that to be inappropriate.
20 Q. Is that a terminable offense?
21 A. Not in singularity, but perhaps in summation
22 with other items.
23 Q. You have identified a number of items in here
24 as being inappropriate conduct. So adding all of those
25 together, would you consider the sum total of them to be

Page 107

1 grounds for termination?
2 MR. NAYLOR: Object to the form.
3 THE WITNESS: Not necessarily.
4 Q. (BY MR. SWARTZ) So all this behavior that you
5 believe to be inappropriate and you believe Ms. Hammer
6 engaged in or allowed to occur would be conduct that you
7 would not terminate her for.
8 MR. NAYLOR: Object to the form.
9 THE WITNESS: This wasn't over termination.
10 This is being placed on administrative leave. You are
11 mixing up two points.
12 Q. (BY MR. SWARTZ) No. I'm asking you whether
13 you would terminate Ms. Hammer for doing these things.
14 MR. NAYLOR: Object to the form.
15 Q. (BY MR. SWARTZ) Not whether you would place
16 her on leave for these things.
17 A. Just on these things alone? No. But you were
18 interjecting two things. You were talking about
19 termination, and these bullet points, these bullet
20 points do not refer to termination. They refer to being
21 placed on administrative leave.
22 Q. I understand.
23 A. I want to make that very clear.
24 Q. I understand. I'm just curious whether they
25 would also give rise to grounds for termination.

Page 108

1 MR. NAYLOR: Object to the form. Is that a
2 question?
3 MR. SWARTZ: Yes.
4 MR. NAYLOR: It's been asked and answered.
5 Go ahead if you want to respond again.
6 THE WITNESS: You interjected something and I
7 lost my train of thought.
8 Q. (BY MR. SWARTZ) That's okay. We can move on.
9 I think I get your point, that some of these things are
10 terminable, but not on a singular basis.
11 A. Yes.
12 Q. Something else would have to happen to add to
13 the mix.
14 A. Yes.
15 MR. NAYLOR: Object to the form.
16 THE WITNESS: Yes.
17 Q. (BY MR. SWARTZ) As long as we understand each
18 other.
19 The last paragraph of your affidavit,
20 paragraph 11, you state that based upon your personal
21 observations and knowledge, you are making the decision
22 that it's in the best interest of the City to place Ms.
23 Hammer on paid leave pending the outcome of the matters
24 under consideration and investigation. Do you see that?
25 A. Yes.

Page 109

1 Q. What matters were under consideration and
2 investigation as of January 9, 2012?
3 A. I believe the Ball report was still going to
4 be presented to the council. I felt it was in the best
5 interest perhaps of both parties, Ms. Hammer and the
6 other people in the City, to separate them.
7 Q. You don't state that it's in the best interest
8 of Ms. Hammer though. You state it's in the best
9 interest of the City; right?
10 MR. NAYLOR: Object to the form.
11 THE WITNESS: Yes. That was what I stated at
12 the time, January of 2012.
13 Q. (BY MR. SWARTZ) So other than the items that
14 were being -- that were still under consideration and
15 investigation by Patty Ball, is there anything else that
16 you are referring to when you use the phrase "outcome of
17 the matters"?
18 A. Yes. I believe it would be under
19 investigation, on paid leave pending the outcome of the
20 matters under consideration and investigation. And I
21 believe that would be the Patty Ball report.
22 Q. Well, you wrote it, so I'll go with your
23 belief.
24 You got a very long presentation by Patty Ball
25 the next day, the day after you signed this affidavit,

Page 110

1 on January 10, 2012. Do you recall that?
2 A. Yes, I couldn't recite exactly what she said,
3 but I recall the meeting, yes.
4 Q. It was a very long meeting as I understand it
5 from your fellow council members at the time.
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: I don't know at this time. I
8 don't know the length of the meeting.
9 Q. (BY MR. SWARTZ) Do you recall what you
10 learned during the presentation at that meeting?
11 A. The summation was that there should be further
12 outside investigations of the entire matter. That was
13 what the summation of her presentation was. And I
14 alluded to that earlier in my testimony today.
15 Q. You said that she alluded to criminal conduct,
16 recommended that her investigation should stop; is that
17 right?
18 A. I don't believe she said the word "stopped,"
19 no. Your question contains some incorrect premises
20 there.
21 She felt that -- as I said I can't exactly
22 quote her last conclusion, which I already stated
23 earlier in my testimony today, that she felt that there
24 was -- in her investigation there she had produced
25 enough documentation that she felt that an outside

Page 111

1 agency should pursue an investigation of the City on
2 these matters, and she mentioned the words, "and to
3 investigate possible criminal conduct." I believe that
4 might be her exact wording. And I believe that was my
5 testimony earlier this morning, I believe.
6 Q. In the January 10, 2012 meeting with Patty
7 Ball where she presented her report to the council, did
8 you learn that Ms. Hammer had engaged in any misconduct?
9 A. From the Patty Ball report?
10 Q. Yes. Did you learn of any information
11 contained in the Patty Ball report that led you to
12 believe that Ms. Hammer had engaged in any misconduct?
13 A. Yes. From the Patty Ball report it was
14 inferred by Patty Ball that there was -- and it was her
15 report, not mine, she was stating her conclusions. And
16 it was our conclusion, I believe at that time, when the
17 council decided that -- I'm not sure at that meeting or
18 another meeting later, that the council determined that
19 there should be a further investigation.
20 Q. Into the potential criminal allegations.
21 A. No, investigation of all the aspects. There
22 had been other things added at that time. I believe the
23 things in the fire department had been added. Sometime
24 during the middle of her investigation it was reported
25 that people in the fire department had contacted, I'm

Page 112

1 not sure who they contacted, back to Patty Ball with
2 some allegations of misconduct in the fire department.
3 So the city council had a meeting and
4 authorized additional funding for the Patty Ball report
5 to investigate the fire department and other matters.
6 Q. Let me get you to focus just on any items of
7 misconduct engaged in by Sharon Hammer that you learned
8 of at the January 10, 2012 meeting.
9 A. I learned of allegations of misconduct. You
10 are saying did I learn of facts. I learned of
11 allegations in the report.
12 Q. They were still allegations at that point?
13 A. They were still -- they were allegations and
14 they were conclusions by Patty Ball that said needed
15 further investigation.
16 Q. So Patty Ball, to your recollection, did not
17 state that Sharon Hammer had engaged in any type of
18 misconduct?
19 MR. NAYLOR: Object to the form.
20 THE WITNESS: I couldn't recall her exact
21 comments or her exact wording, but the inference was
22 that she felt she uncovered misconduct, which should be
23 followed up with some possible criminal investigation.
24 Q. (BY MR. SWARTZ) As related to Ms. Hammer.
25 A. Yes, and also the fire department.

Page 113

1 Q. Back to your affidavit, page 2, paragraph 8,
2 you are recounting a January 4, 2012 day in the office
3 with Ms. Hammer. Do you see that there?
4 A. Yes. That might have been the day that I
5 asked her, that I came in early -- no, the first day.
6 Okay.
7 Q. This is the first day after you were sworn in.
8 A. Yes.
9 Q. This is your first day on the job.
10 A. Yes.
11 Q. Did you go to Ms. Hammer and ask her to
12 respond to anything?
13 A. No. That was the same day also that five
14 people were lined up in the hall telling me they were
15 going on various meetings.
16 I think Ms. Hammer -- the offices were
17 adjoining with a door between, and Ms. Hammer came in
18 repeatedly to tell me, quote, repeatedly, that I've done
19 nothing wrong. I haven't done anything wrong. I
20 haven't done anything wrong. Then repeated that over
21 and over again.
22 And I don't believe I discussed the specific
23 allegations at that particular time. And I think I
24 ended the conversation by telling her that I was going
25 to take everything under consideration and examine

Page 114

1 everything, that I wasn't making any -- she flatly asked
2 me, Are you going to terminate me? I recall her asking
3 that. And I said, I have not made that determination.
4 But that was one of her first questions, Are you going
5 to terminate me, Mayor? I expressed to her at that
6 particular time, no, I was not.

7 Q. Why were you having her tell you about her
8 abilities?

9 A. I didn't. I allowed her to express herself.

10 Q. And that is what she expressed was her
11 abilities, the allegations, and her --

12 A. She felt that she carried out her
13 responsibilities for the City responsibly and that she
14 had not done anything wrong.

15 Q. Did you agree or disagree with her?

16 A. I told her I had not made any determination.
17 And then she asked me repeatedly again, Are you going to
18 terminate me? At the end of the conversation she asked
19 that again. Are you going to terminate me? I said, I
20 have not made that decision.

21 Q. Do you recall asking Ms. Hammer on your first
22 day in office, the January 4 day that you are
23 recounting, do you recall pressing Ms. Hammer on what
24 Mayor Willich and Adam King told her when they came out
25 of the November 11, 2011 executive session?

Page 115

1 A. I don't recall that ever being discussed.

2 Q. You don't recall asking her what they relayed
3 to her?

4 A. No, I don't.

5 Q. Before the election do you recall going into
6 City Hall and telling a number of City employees, Don't
7 worry about your job, if I'm elected you still have a
8 job here?

9 A. Yes, I went to each particular person and I
10 told them, I said, I don't anticipate making any changes
11 at this time.

12 Q. Was Ms. Hammer one of those employees?

13 A. Yes.

14 Q. After the election do you recall doing a
15 similar thing, going around and talking to employees and
16 telling them their jobs were safe?

17 A. No.

18 Q. You don't recall that or it didn't happen?

19 A. I don't recall. In an acrimonious election, I
20 wanted a harmonious transition. That morning we had the
21 council meeting reaffirming the election, and I wanted
22 to go around and reaffirm people that I knew some
23 supported Willich, some of them didn't support me, and
24 that at this particular time I was not making any
25 decisions and I wanted business as usual.

Page 116

1 I had a further conversation with Ms. Hammer
2 on how I wanted the City to be administered in the
3 future at that time after the election. And I told her
4 that I expected that she would have probably -- how did
5 I phrase it? I believe I expressed that I was going to
6 expect more, that she would be city administrator, but
7 she would also be like an executive assistant, and I
8 would have her writing some of the letters that Mayor
9 Willich used to write, that I didn't need the ego to
10 write all those letters. And she informed me, Well, we
11 are going to need more staff then.

12 So we had a conversation after that when I
13 said I'm not going to -- we are not going to -- I want
14 to meet with you. I'm going to make some changes how
15 the City is administered and how it's run.

16 Q. Did she raise any objections to --

17 A. The only objection was, We are going to need
18 more staff then, we are going to need more people.

19 Q. Was that a problem?

20 A. Yes.

21 Q. What was the problem with that?

22 A. I felt we were overstaffed to begin with.

23 Q. Did you communicate that to Ms. Hammer?

24 A. This was a hallway conversation. I believe it
25 was out -- David Blampied was gone, and it was in front

Page 117

1 of David Blampied's desk that we had that conversation.

2 I was trying to calm the City at that time
3 after, because everyone was in shock, no one expected me
4 to be elected. The faces were long, and I was trying to
5 bring some unity to the City, to reassure them that I
6 wasn't -- at that particular time no sweeping changes, a
7 reassurance to try to make it harmonious during that
8 time. I wasn't mayor yet, that was the day after the
9 election.

10 Q. That you were telling Sharon Hammer that you
11 were going to have other people write letters for you?

12 A. Yes, because it was a brief conversation in
13 front of David Blampied's desk, yes, that I was going to
14 have additional duties for her under the type of
15 management that I envisioned. My management was going
16 to be different than perhaps Mr. Willich's.

17 Q. Other than saying that she thought more staff
18 would be needed, did she in any way state that she
19 wouldn't go along with your plan?

20 A. No, not at that time. As I said, it was just
21 a brief conversation because we had the time.

22 Q. Did she ever raise objections to your
23 proposals to change things?

24 A. We did not discuss it again, because I didn't
25 have any discussions with the city -- in fact, I really

Page 118

Page 120

1 didn't feel welcome as mayor coming in. That afternoon
2 I asked David Blampied, I said, I want to hit the floor
3 running, I want stationery printed up with my name on
4 it, I want business cards printed up with my name on it.
5 He said, You don't have the authority to do that. I
6 won't do that until you are mayor.

7 Q. Is that statement from David Blampied
8 something that you attributed to Sharon Hammer?

9 A. No. I attributed it to the way the City was
10 run. So I approached Mayor Willich. I believe I
11 approached Ms. Hammer also, I said, What is this about,
12 me not being able to get my business cards printed up
13 until I'm inaugurated? And I believe I mentioned it to
14 her, and I believe she mentioned, This would have to go
15 through the mayor. So I mentioned it to Willich, and he
16 got mad, and he said, You should have come to me first.
17 I don't want you talking to staff. He said, I'll tell
18 David Blampied to print up your stuff.

19 Q. Is that an exchange that you attribute to
20 Sharon Hammer?

21 A. No.

22 Q. Is the feeling of not being welcomed as mayor
23 something you attributed to Sharon Hammer?

24 A. The acrimony of the election, no, because it
25 was obvious the City was in psychological division and

1 Hammer, you found that to be appropriate or
2 inappropriate?

3 A. Inappropriate. She would have had to be a
4 part of it to make that measurement, to authorize it,
5 and that the mayor knew it and Joan Lamb knew it. And
6 Joan Lamb already had her signs attached to two trees in
7 front. And so it was a violation of City policy to
8 allow electioneering on City property. But their
9 interpretation was it was allowable because it was 100
10 feet from the election place.

11 Q. If one of your employees did that today, would
12 you fire them?

13 MR. NAYLOR: Object to the form; calls for
14 speculation.

15 THE WITNESS: On the spot would I terminate
16 them?

17 Q. (BY MR. SWARTZ) Yes. If one of your
18 employees engaged in that conduct, would you consider
19 that conduct to be a terminable offense?

20 MR. NAYLOR: Same objection.

21 THE WITNESS: I don't know. That is
22 speculation.

23 Q. (BY MR. SWARTZ) How are you feeling? Do you
24 need a break? Doing okay?

25 A. I'll need a water break in a little while, a

Page 119

Page 121

1 in shock that I had won.

2 Q. Do you believe Sharon Hammer is responsible
3 for any of that environment?

4 A. For the election some occurrences happened
5 that she had to be a part of. The City -- State law, I
6 believe, is that there can be no electioneering within
7 100 feet of a poll. And the City has a policy that
8 election signs cannot be placed on City right-of-way or
9 City property.

10 And the day of election I was up on Elk Horn
11 Hill holding a sign, and I got a call from a constituent
12 who said that Wayne Willich and Joan Lamb are right out
13 there on City property with their signs campaigning. I
14 said, They can't do that.

15 So I immediately came down and confronted
16 Mayor Willich, I said, What are you doing? He said,
17 Well, Ms. Hammer and I have interpreted City law and
18 State law that says that electioneering can be within
19 100 feet of campaign headquarters.

20 So Sharon Hammer or someone had someone
21 measure with a yardstick, with a tape measure 100 feet
22 from the farthest door, and then made a reinterpretation
23 that they could have their signs on City property, since
24 it was 100 feet from the election campaign.

25 Q. This conduct, which you attributed to Sharon

1 reverse water break.

2 MR. SWARTZ: Why don't we take a break.
3 (Recess taken.)

4 Q. (BY MR. SWARTZ) Mayor, any testimony that you
5 need to clarify, add to, correct?

6 A. Not at this time. When I review the
7 transcript, I may find something, I may not, but at this
8 time, no.

9 Q. From November 11 when the allegations against
10 Ms. Hammer were first brought to light, all the way to
11 the termination of her employment on the 18th, do you
12 recall any executive session where Nils Ribi abstained
13 from discussing the allegations against Sharon Hammer?

14 MR. NAYLOR: Object to the form.

15 THE WITNESS: I don't know. I would have to
16 check back at the minutes and see who attended or who
17 did not. I don't recall.

18 Q. (BY MR. SWARTZ) There are no minutes of what
19 transpired during the executive session.

20 A. No, but there are minutes of who was in the
21 executive session.

22 Q. We've got them all here, and you can look
23 through them. I'm not asking whether he attended each.
24 I'm just asking whether you recall an executive session
25 where he was in attendance and said, I am not going to

Page 122

1 discuss the allegations against Sharon Hammer, something
2 to that effect.
3 A. At this time I don't recall.
4 Q. Do you recall anyone being in executive
5 session and stating that they shouldn't discuss the
6 allegations about Ms. Hammer?
7 A. I don't recall that, no. I don't recall that
8 happening. I don't recall it not happening. I have no
9 recollection either way of that.
10 Q. Do you recall Jim Donoval's request that -- or
11 notice, I should state, that Adam King remove himself
12 from all of the executive sessions, city council
13 meetings because of a conflict that he had with regard
14 to Ms. Hammer?
15 A. I don't recall that. It may have been, but I
16 don't recall it.
17 Q. You don't recall any discussion with regard to
18 that?
19 A. At this time, no. Somehow it transpired
20 that -- well, not somehow. No, I don't. I don't
21 recall. This was during the time when Willich was still
22 mayor that you are talking about, until when, what time
23 frame are you talking?
24 Q. The time that you were sitting as a city
25 council member until the termination of Sharon Hammer's

Page 123

1 employment on the 18th of January.
2 MR. NAYLOR: January 19th, 2012.
3 Q. (BY MR. SWARTZ) January 19th, 2012.
4 A. Whether Adam King should be recused or
5 somebody request he be recused? What was your question
6 again?
7 Q. Whether there was any discussion about whether
8 Adam King should recuse himself from the executive
9 sessions or the city council meetings where there was
10 any discussion about Sharon Hammer, the allegations
11 against her.
12 A. I don't recall. I don't recall any
13 conversations or not recall a conversation. I don't
14 recall anything about it.
15 Q. Do you recall any discussion about perhaps
16 Nils Ribi should recuse himself because he was engaged
17 in litigation with Mr. Donoval and Ms. Hammer?
18 A. I don't recall.
19 Q. Do you recall Nils Ribi participating in the
20 discussion about Ms. Hammer's -- or the allegation of
21 misconduct being made against Ms. Hammer in any of the
22 executive sessions?
23 MR. NAYLOR: Object to the form. Could you
24 read that question back.
25 (Record read back.)

Page 124

1 THE WITNESS: I don't recall.
2 Q. (BY MR. SWARTZ) You don't recall whether he
3 engaged in any those discussions?
4 A. No, I don't.
5 Q. Do you recall whether Adam King engaged in any
6 of the discussions regarding the allegations against Ms.
7 Hammer?
8 A. He may have been present at some meetings, but
9 I don't know which meetings, and he may not have been
10 present at all of them. I don't recall.
11 Q. You don't have any recollection of whether he
12 engaged in any of the discussions about Ms. Hammer's
13 alleged misconduct?
14 A. During executive sessions?
15 Q. Correct.
16 A. I don't recall, no.
17 Q. Do you ever recall giving Nils Ribi permission
18 to disclose what transpired in executive sessions?
19 MR. NAYLOR: Object to the form.
20 THE WITNESS: Permission?
21 Q. (BY MR. SWARTZ) Yes, to publicly disclose
22 what took place in executive session.
23 A. Will you rephrase that again. You mean as
24 mayor, as council person?
25 Q. Either position.

Page 125

1 A. Rephrase the question again then.
2 Q. Did you ever give Nils Ribi permission to
3 publically disclose what took place in an executive
4 session?
5 MR. NAYLOR: Object to the form.
6 THE WITNESS: I don't think it was ever
7 discussed. I don't recall a conversation about that.
8 Q. (BY MR. SWARTZ) Okay. Would disclosing --
9 A. Why would -- I don't think I would have
10 authority to tell him what to do in any respect.
11 Q. Did you understand that --
12 A. Even if it occurred, I don't think I would
13 have authority to tell a council person what to do.
14 Q. Did you understand Mayor Willich's testimony
15 yesterday about his understanding of executive session
16 and what transpired there was to remain confidential?
17 MR. NAYLOR: Object to the form.
18 THE WITNESS: You are asking me only about
19 Mayor Willich, not in general confidentiality of
20 executive sessions. You are asking me only what Mayor
21 Willich stated or comment on what he stated, or are you
22 asking my opinion on executive session confidentiality?
23 Q. (BY MR. SWARTZ) Why don't we try it that way.
24 Did you understand what took place in
25 executive session was not to be publicly disclosed?

Page 126

Page 128

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: That was in question. My first
3 year on the council there became a question of
4 confidentiality by a council person, Joan Lamb, and
5 breaking confidentiality of executive sessions. And
6 there was a council discussion on exclusivity of
7 executive sessions.
8 And then recently we've had an attorney
9 general's report which varies from that, assistant
10 attorney general's report on confidentiality of
11 executive sessions going beyond what I have understood
12 before. So I understood they were to be confidential;
13 however, in my term on the council we had another
14 council person break that confidentiality, and nothing
15 was done to her, she wasn't reprimanded, nothing
16 happened done in that case with Joan Lamb.
17 So in generalities I'm answering your
18 question. My understanding personally is that I keep
19 things confidential on executive sessions. Like I said,
20 it's up to each council person to decide.
21 Q. (BY MR. SWARTZ) After the female council
22 member broke confidentiality, did the city council
23 implement a policy on confidentiality regarding
24 executive session?
25 MR. NAYLOR: Object to the form.

1 through 817. I'm going to ask you to take a look at
2 paragraph 10.
3 A. This isn't anything pertaining to me or my
4 document. This is someone else's document.
5 Q. Yes, Nils Ribi and his private attorney Keith
6 Roark put this together.
7 A. What was the date of this?
8 Q. It looks like it is November 23rd.
9 A. You want me to take a look at paragraph 10?
10 Q. Paragraph 10, please.
11 A. (Reviewing document.) The plaintiff is who?
12 Q. The plaintiff is Sharon Hammer.
13 A. I tried to understand. It's a long paragraph.
14 I tried to understand it.
15 Q. Yes, it is. In reading it it states that: As
16 of November 18, the city council and mayor had reason to
17 believe that Ms. Hammer may have committed serious
18 misconduct, including possible criminal violations
19 dealing with misuse of public funds and falsification of
20 public records. Do you see that there?
21 A. Yes.
22 Q. Do you recall any discussions about those
23 items in the November 11, 14, or 17 executive sessions?
24 MR. NAYLOR: Object to the form; asked and
25 answered.

Page 127

Page 129

1 THE WITNESS: I can't answer that. I haven't
2 looked at that part of our City policy manual or that
3 for some time. I don't know at this time.
4 Q. (BY MR. SWARTZ) Are you doing okay?
5 A. Oh, yeah.
6 Q. Earlier I asked you if you recalled any city
7 council member discussing criminal allegations against
8 Sharon Hammer in the November 11, 2011 executive
9 session, and you stated that you did not recall that.
10 A. Yes, I still reaffirm that I do not recall.
11 Q. What about the November 14 meeting, do you
12 recall whether there was any discussion of criminal
13 allegations at the November 14 meeting?
14 A. Criminal allegations against who?
15 Q. Sharon Hammer.
16 A. I don't recall at that meeting.
17 What do you want me to reference in this?
18 Q. We'll get there in a second.
19 What about the November 17, 2011 executive
20 session, do you recall any criminal allegations being
21 discussed in executive session there?
22 A. No, I don't recall.
23 Q. I understand.
24 I'm showing you an affidavit that was
25 submitted by Nils Ribi. It's marked as Hammer 813

1 THE WITNESS: I don't recall.
2 Q. (BY MR. SWARTZ) One way or the other?
3 A. Yes.
4 Q. Okay. Mayor, why was Ms. Hammer's employment
5 terminated?
6 A. Ms. Hammer's employment was terminated at my
7 recommendation to the council because I felt that it
8 would be difficult to work with Ms. Hammer in the
9 future. And I wanted a choice of naming my own
10 administrator, similar to what Mayor Willich had done
11 four years previously.
12 Q. Why did you feel like it was going to be
13 difficult to work with Ms. Hammer?
14 A. One of the reasons was the letter that we
15 discussed previously, in which she had said she had
16 authority over the mayor, over the city attorney, over
17 the city council. I don't know whether she put the
18 implementation in that letter or not. But I felt that
19 it would be difficult to work, if I had the total
20 responsibility and someone else had the authority under
21 that interpretation. I felt that I could work better
22 with someone else.
23 Q. What other reasons?
24 A. That's pretty much it. My style of
25 management, my style of management considerations

Page 130

Page 132

1 differed from what had transpired in the past. I wanted
2 a management in a more strict control of the City. And
3 I just felt that I could work better perhaps with
4 another city administrator.

5 Q. I'm sorry. I didn't catch that.

6 A. I could work better with another city
7 administrator, of going through the process again of
8 city administration.

9 Q. Showing you that letter that you were
10 referring to, just to make sure we are on the same page,
11 it's SH-TIMELINE 465 through 466. Is that the letter
12 that you are referring to where she states that she has
13 got authority to interpret the policies?

14 A. Yes. "I have the authority to make final
15 determination of the application of all Sun Valley
16 personnel policies and procedures, and neither the Sun
17 Valley City Attorney, the Sun Valley Mayor or the Sun
18 Valley City Council has the authority to question or
19 overrule such findings."

20 But I terminated Sharon Hammer without cause.

21 Q. Do you see --

22 A. I requested termination of Sharon Hammer
23 without cause.

24 Q. Why is that?

25 A. Because that was my determination.

1 Q. Let's go back to the letter that you were
2 citing as the reason that you believed it would be
3 difficult to work with Ms. Hammer.

4 A. Let me correct you. I'm sorry. It's your
5 deposition. But you said "the reason." I am just
6 listing out some things during the course of this
7 deposition of why I felt that I would rather work with a
8 new city administrator.

9 Q. What are those things?

10 A. I have already listed them during the course
11 of the conversation. And it's not pertinent because
12 she's being terminated without cause.

13 Q. Well, I would like you to help me identify
14 what in your testimony today you believed supported your
15 belief that you could not work with Ms. Hammer.

16 MR. NAYLOR: Object to the form. He just
17 barely answered that.

18 Q. (BY MR. SWARTZ) For example, was it because
19 she was in the Willich camp, was that a reason why you
20 didn't believe you could work with Ms. Hammer?

21 MR. NAYLOR: Object to the form.

22 THE WITNESS: As I stated, and I'll state it
23 again. It was my decision that I would rather work with
24 a new city administrator, and it was my decision to ask
25 the council to terminate her without cause.

Page 131

Page 133

1 Q. Who did you request that of?

2 A. The council. It was the mayor's request to
3 terminate Sharon Hammer according to her contract that
4 she helped write under the clause of -- what did we just
5 say?

6 MR. NAYLOR: Without cause.

7 THE WITNESS: Without cause. And the council
8 then reaffirmed that, and I informed the council that I
9 felt that I would be able to work better with a new city
10 administrator and I asked that she be terminated without
11 cause.

12 Q. (BY MR. SWARTZ) Did you discuss her contract
13 with the city council?

14 A. I'm not sure. I believe the city -- I don't
15 know whether the city council had a copy of her contract
16 or not. I don't know at the time.

17 Q. Did you look at her contract before you
18 reached your determination?

19 A. Yes.

20 Q. That you wanted to terminate her for cause --
21 or without cause?

22 A. Yes, I knew that clause was in there, yes.
23 Termination with cause, without cause. It was my
24 determination to ask for the termination of the council
25 without cause.

1 Q. (BY MR. SWARTZ) Yes. And I'm asking you
2 about the testimony you just gave where you said, for
3 all these reasons that you talked about today you
4 reached that conclusion. I want you to help me identify
5 all the reasons that led you to believe that you would
6 work better with a new city administrator?

7 MR. NAYLOR: Object to the form; asked and
8 answered.

9 THE WITNESS: Yes, I believe we have gone
10 through that. But again, I'll come back to the question
11 that my determination was to terminate her without
12 cause, that I could work better with another city
13 administrator. And what you have, what we have
14 discussed previously, I've already answered.

15 Q. (BY MR. SWARTZ) You haven't identified all
16 those things that you believe --

17 A. I don't have to. I terminated her without
18 cause, so I don't need those things.

19 Q. I understand. I'm looking for -- you keep
20 using this phrase, I've identified a bunch of things
21 today that have led me to believe that I couldn't work
22 with her as an administrator. I just --

23 A. I don't believe I used that exact language.

24 MR. NAYLOR: We can go back and read from the
25 record.

Page 134

1 MR. SWARTZ: That would be great.
2 Beverly, if you don't mind.
3 (Record read back.)
4 Q. (BY MR. SWARTZ) Mayor, you stated throughout
5 the course of your deposition today that you had
6 identified reasons why you didn't believe that you could
7 work effectively with Ms. Hammer, and I'm just asking
8 you to identify what those are. And if you can't, you
9 can't.
10 MR. NAYLOR: Objection; asked and answered.
11 THE WITNESS: We were mixing up two things
12 early on, because we were on why did I put her on
13 administrative leave. That got mixed up into, I believe
14 in my mind, maybe in your mind too, as to reasons for
15 why I couldn't work with her. I separated out, I made
16 it clear those were reasons for putting her on a paid
17 administrative leave, not reasons for her termination.
18 Q. (BY MR. SWARTZ) I understand.
19 A. That was the cause. It was just my sense of
20 management.
21 Q. Your sense that your management style just
22 wouldn't work with Ms. Hammer.
23 A. My sense of management style that says I would
24 prefer to work with another city administrator. Because
25 I chose the route of terminating, asking for termination

Page 135

1 without cause, and I hold by that. There was no cause,
2 there was no specific cause, there was no specific
3 reason for termination of Sharon Hammer without cause.
4 And I felt that I could work better with another, a new
5 city administrator.
6 Q. Going back to the memorandum you cited to
7 earlier as being one of the reasons why you didn't feel
8 like you could work with her. Do you see where she is
9 citing to policies of the City of Sun Valley?
10 A. Uh-huh.
11 Q. And she's quoting from that policy?
12 A. Yes.
13 Q. That policy states that: "The city
14 administrator shall make the final determination of
15 questions of interpretation of these policies and the
16 application of these policies"?
17 A. Yes.
18 Q. You disagreed with that?
19 A. I disagreed with the City policy of that, or I
20 disagreed with what?
21 Q. Did you disagree with her position that that
22 is what the policy stated?
23 A. I disagreed with her analysis, her legal
24 analysis of breaking the tie vote -- of the mayor not
25 being able to break the tie vote.

Page 136

1 Q. Now, Mayor, it's your testimony, you can
2 change it as many times as you like, but earlier today
3 when I asked you why you didn't think you could work
4 with her, you stated it was specifically because of her
5 conclusion that is based on her quoting this section of
6 the policy that states that she has final interpretation
7 and application of the policies. Do you recall that
8 testimony?
9 MR. NAYLOR: Objection; argumentative. That's
10 what the conclusion.
11 THE WITNESS: That's the conclusion.
12 Q. (BY MR. SWARTZ) The conclusion of her reading
13 of this sentence?
14 A. I believe that I clarified that by saying that
15 I disagreed with her interpretation of what it was, but
16 because of her -- because of her conclusion, as mayor, I
17 would not be allowed to contest her interpretation as to
18 whether the mayor could break a tie vote or not.
19 Q. On the termination of her employment.
20 MR. NAYLOR: Object to the form.
21 THE WITNESS: Any employee, not just her.
22 Q. (BY MR. SWARTZ) Anything else about this memo
23 that you disagreed with and that led you to believe that
24 you could not work with her?
25 MR. NAYLOR: Other than what has been

Page 137

1 testified to. Object to the form.
2 MR. SWARTZ: That's what why I said "anything
3 else," just to be clear.
4 THE WITNESS: No, not at this time.
5 Q. (BY MR. SWARTZ) Did you believe that one of
6 the reasons why you couldn't work with her was your
7 belief of her involvement in the illegal campaigning on
8 election day?
9 A. No.
10 Q. That didn't ire you at all?
11 A. No. That would have been with cause. My
12 request for termination was without cause.
13 Q. What about the allegations of criminal
14 conduct, do you believe you could have worked with
15 Sharon Hammer knowing there were allegations of criminal
16 conduct being made against her?
17 MR. NAYLOR: Object to the form; calls for
18 speculation.
19 THE WITNESS: No, because that investigation
20 was not complete, and there was subsequent
21 investigations after that and that had not entered into
22 it. At that stage there was still -- it was still in
23 the investigative stage.
24 Q. (BY MR. SWARTZ) Did you find Sharon Hammer to
25 be distracting to the operations of the City?

Page 138

Page 140

1 MR. NAYLOR: Object to the form.

2 THE WITNESS: Distracting?

3 Q. (BY MR. SWARTZ) All the allegations
4 surrounding Sharon, all the investigations, did you find
5 that to be distracting to your ability to run the City?

6 A. Certainly there were distractions within the
7 City, but that was more throughout the City, concerning
8 other whistleblowers, there were other things going on
9 within the fire department that were perhaps even more
10 important to the City than these things. No, I didn't
11 feel that was important to me.

12 Q. Sharon Hammer didn't distract you from being
13 able to focus on your duties as mayor?

14 A. She was on an administrative leave. She
15 wasn't there.

16 Q. I'm showing you a document marked as
17 SH-TIMELINE 577. It's a memorandum from Sharon to you
18 and the city council dated January 4, 2012. Do you see
19 that?

20 A. Where are we?

21 MR. NAYLOR: (Indicating.) The question is do
22 you see it.

23 THE WITNESS: I see the document.

24 Q. (BY MR. SWARTZ) Do you recognize it? It's
25 just a single page.

Page 139

1 A. I see it.

2 Q. Do you recognize it?

3 A. Not right off I don't recognize it. I don't
4 recall seeing it for quite some time. So do I recognize
5 it? No. Do I see it? Yes.

6 Q. Do you see the last sentence in the first
7 paragraph where Ms. Hammer writes: "I am requesting
8 that I be allowed to discuss these matters directly with
9 the Sun Valley City Council at the executive session on
10 Thursday, January 5, 2011 as part of my constitutionally
11 protected due process rights in the matter.

12 A. Yes, I see that.

13 Q. Do you have any recollection of Ms. Hammer's
14 request for an opportunity to respond to the allegations
15 being made against her?

16 A. What is your question again, sir? I'm trying
17 to read through the entire, get an understanding.

18 Q. Sure. As I read this, maybe you have a
19 different interpretation, but Sharon Hammer is asking for
20 an opportunity to be able to respond to the allegations
21 that are being made against her.

22 MR. NAYLOR: Object to the form; the document
23 speaks for itself.

24 Q. (BY MR. SWARTZ) And my question to you was
25 whether you had an understanding that Ms. Hammer was

1 asking for that opportunity.

2 A. Well, the letter is in two parts, as I'm
3 reading through it, which was two years ago. She's also
4 in the last paragraph stating that Mayor Willich, on
5 December 29, had already received the Patty Ball report
6 and there was no reason to bring charges against her,
7 the matter is closed. The city council was violating
8 its own policies by failing to -- what she's asking for
9 is twofold. I guess she's asking for the city council
10 to discuss it, and then she's also saying that it's
11 over, that the decision was made by the mayor.

12 Q. So before you terminated Ms. Hammer's
13 employment, did you understand that she wanted an
14 opportunity to respond to the allegations that were
15 being made against her?

16 A. No, because the last paragraph she is already
17 stating her case, a decision was made and we would be in
18 violation if we discussed it, because it says the
19 termination is final and binding, the mayor and the city
20 council will be violating its own policy to respect the
21 decisions of the mayor.

22 So the first paragraph she's asking for a
23 hearing and the last paragraph she says it's over, the
24 mayor has made his final decision and you will be
25 violating your own policies if you discuss it further,

Page 141

1 because it's a final binding decision.

2 Q. Did you have any discussions regarding Ms.
3 Hammer's January 4th positions on the matter?

4 A. No, not to my knowledge.

5 Q. Do you believe that Mayor Willich's decision
6 was final and binding?

7 A. No. I've already covered that this morning, I
8 believe.

9 Q. So eliminating the last paragraph, based upon
10 your own belief of your authority that it's not final
11 and binding, what did you do with regard to her request
12 for a hearing?

13 MR. NAYLOR: Object to the form; foundation.

14 THE WITNESS: I'm not quite sure how to answer
15 because this is going back to January 4, 2012, and I'm
16 referring to Mayor Willich's statements of yesterday at
17 his deposition. And at the time I was unaware that
18 Mayor Willich had made that determination she's
19 claiming, that the determination was made. So what is
20 your question?

21 Q. (BY MR. SWARTZ) Why didn't you give Ms.
22 Hammer an opportunity to respond to the allegations that
23 were being made against her?

24 MR. NAYLOR: Object to the form.

25 THE WITNESS: I don't believe Patty Ball had

Page 142

1 reported to the council yet at this particular time. I
2 believe there was still an investigation. The Patty
3 Ball report had not been presented to the council at the
4 time.

5 Q. (BY MR. SWARTZ) Did you offer Sharon Hammer
6 an opportunity to present her side of the story after
7 the Patty Ball report came out?

8 A. Rephrase that again. Did I?

9 Q. Yes. Did you offer Sharon Hammer an
10 opportunity at any time to present a response to the
11 allegations that were being made against her?

12 MR. NAYLOR: Object to the form.

13 THE WITNESS: The council nor I were not
14 making any allegations, it was Patty Ball, it would be
15 the responsibility for Patty Ball, and Ms. Hammer to
16 either respond to Patty Ball or Patty Ball's
17 recommendation that there be further investigation. So
18 no, there was no need for me or the council to intervene
19 with that particular point.

20 Q. (BY MR. SWARTZ) That was your determination
21 at that time?

22 A. Yes.

23 Q. You understand from this memorandum that she
24 was asking to speak to you and the council; right?

25 A. The document speaks for itself. This is dated

Page 143

1 January 4. When was I sworn in? That day or the day
2 before?

3 Q. 5:00 on January 3, 2012.

4 A. Ask your question again, please. Would you
5 repeat your question, please.

6 Q. Did you understand that Sharon Hammer was
7 asking to have an opportunity to speak to yourself and
8 the city council so she could respond to the allegations
9 that were being made against her?

10 A. She doesn't mention me. She says she wants to
11 discuss these with the city council. There is no
12 reference to discussing it with me.

13 Q. Did you understand that she was wanting to
14 discuss the matters then with the city council?

15 A. Yes. Well, reading this now, that was
16 apparently the request.

17 Q. And that you determined that along with the
18 city council, if I understood your testimony correctly,
19 that that wouldn't be an appropriate forum, that the
20 appropriate forum was for her to chat with Patty Ball?

21 A. No. The appropriate forum would be for
22 further investigative matters and she could respond to
23 whoever was doing the further investigative matters,
24 that the council was not in a position to be
25 investigating this.

Page 144

1 Q. Do you recall asking Patty Ball to interview
2 Sharon a second time?

3 A. Did I ask Patty Ball to a second time?

4 Q. Yes. To follow up with Sharon Hammer on a
5 second interview?

6 A. I thought that there were opportunities, and I
7 was told by, I think, Patty Ball that she had given
8 Sharon Hammer the opportunity to respond, and Sharon
9 Hammer hadn't responded to her.

10 Q. Do you recall a period of time where Patty
11 Ball told you that no further interviews should take
12 place because she uncovered the criminal allegations or
13 uncovered criminal conduct?

14 A. That was in correspondence, either the final
15 summation or correspondence somewhere, and that was the
16 grounds, or the ground rules when she set the
17 investigation with Mayor Willich and I, that she would
18 do an investigation, and that if she came to a point
19 where she felt there should be further investigations to
20 possibly see if there are allegations, then it should be
21 ended at that point.

22 Q. Showing you a January 16, 2012 Sun Valley
23 press release, SH-TIMELINE 618. Do you see that?

24 A. Yes.

25 Q. Do you recognize it?

Page 145

1 A. Yes, I do, because I believe it brings to my
2 recollection that I was not named in the individual
3 lawsuits. There was either a tort letter -- I'm trying
4 to recollect the entire scenario at that particular
5 time. I believe I was left out of the original lawsuit,
6 and it was either in the tort warning letter or in
7 the -- either the lawsuit itself that they purposefully
8 left me out of the lawsuit because they said I was
9 neutral.

10 Q. Do you know who drafted this press release?

11 A. It was drafted by legal counsel. Let me
12 backtrack. Drafted. Let me go back. Drafted.

13 Q. Who came up with the content of this press
14 release?

15 A. (Reviewing document.) The press release I
16 believe was -- I believe it was my policy that nothing
17 would be released without consultation with the legal
18 counsel for the City or the legal counsel for the action
19 that was against the City. So I would think that this
20 was probably prepared by a combination of legal counsel
21 and perhaps myself.

22 Q. When you were talking about legal counsel,
23 were you talking about Mr. Naylor, Mr. King?

24 A. Mr. Naylor.

25 Q. Do you know if Mr. King was involved?

Page 146

Page 148

1 A. No, I don't believe so. I don't know. He may
2 have been at that time.

3 Q. Did you approve this release as its written?

4 A. Yes, I believe I was shown the final product
5 and I approved it to be submitted.

6 Q. Why submit a press release on these topics?

7 A. When I ran for mayor, I alluded to that I
8 would promise my citizens a more open communications and
9 a more open government, and I felt that the citizens
10 should be appraised of what was occurring within the
11 City. And this is part of transparency of government,
12 is relating to the City what has occurred.

13 And since Mr. Donoval, I believe, had been, or
14 his representatives had been essentially spoon feeding
15 things to the Mountain Express to report their
16 allegations, which was almost weekly in their press
17 reports, and citizens were asking, What is this, what is
18 going on, what is the background for it. And in my
19 promise to the citizens of openness and transparency,
20 this was drafted and placed.

21 Q. The fourth paragraph down that begins with the
22 word "Mr. Naylor," do you see that?

23 A. Yes.

24 Q. That first sentence refers to the City's
25 investigative report, do you see that?

1 Q. What do you think that statement about Ms.

2 Hammer's possible engagement of criminal conduct did to
3 her reputation in the public forum?

4 MR. NAYLOR: Objection; form, calls for
5 speculation and argumentative.

6 THE WITNESS: That Ms. Hammer was not named in
7 this, and I believe there were also other people
8 involved in the Patty Ball report, there was members of
9 the fire department. So this was not specifically
10 targeted, by name or by inference, that it be Sharon
11 Hammer.

12 Q. (BY MR. SWARTZ) Do you know the court hearing
13 that is referred to that was held on January 11 where
14 Mr. Naylor announced that the report was being turned
15 over for review of possible criminal conduct? Do you
16 know what hearing that was?

17 A. No.

18 Q. Can you see the first line of your first
19 paragraph, you are referring to the day after a
20 contested court hearing?

21 A. Yes.

22 Q. In that paragraph you are referring to Sharon
23 Hammer's lawsuit?

24 MR. NAYLOR: Object to the form; the document
25 speaks for itself.

Page 147

Page 149

1 A. Yes.

2 Q. Is that investigative report the report that
3 Ms. Ball was putting together regarding the allegations
4 of misconduct engaged in by Ms. Hammer?

5 MR. NAYLOR: Object to the form.

6 THE WITNESS: Yes, I believe it was also
7 because citizens were asking for a copy of the Patty
8 Ball report, particularly a number of citizens had come
9 in and were demanding copies. Since the taxpayers paid
10 for it, they wanted a copy of the Patty Ball report.

11 Q. (BY MR. SWARTZ) They wanted to know whether
12 Ms. Hammer engaged in the misconduct she was alleged to
13 have engaged in, or what?

14 MR. NAYLOR: Objection; calls for speculation.

15 THE WITNESS: No. The citizens just wanted to
16 see the report. This was an explanation that it had
17 been turned over to Blaine County for the independent
18 review and cannot be released to the public at this
19 time.

20 Q. (BY MR. SWARTZ) You also state in this press
21 release that it's being reviewed for possible criminal
22 conduct; right?

23 A. That's what it says. It's been turned over to
24 Blaine County Prosecuting Attorney for an independent
25 review of possible criminal conduct, yes.

1 THE WITNESS: Yes, I guess it does speak for
2 itself.

3 Q. (BY MR. SWARTZ) Does this press release
4 mention any other employees other than Ms. Hammer?

5 MR. NAYLOR: Object to the form.

6 THE WITNESS: It doesn't mention any
7 employees, it doesn't mention Ms. Hammer. The only
8 reference is to a lawsuit filed by Sharon Hammer against
9 the City of Sun Valley. It doesn't mention any
10 employees.

11 Q. (BY MR. SWARTZ) Other than Ms. Hammer.

12 A. It doesn't mention Ms. Hammer either.

13 Q. Do you see Ms. Hammer's name mentioned in this
14 press release?

15 MR. NAYLOR: Object to the form;
16 argumentative.

17 THE WITNESS: Yes, because she created the
18 lawsuit.

19 Q. (BY MR. SWARTZ) Do you see any other
20 employees' names referenced in this press release?

21 MR. NAYLOR: Object to the form.

22 THE WITNESS: No, because it specifically
23 refers to a legal hearing over a lawsuit by Sharon
24 Hammer. It doesn't mention that any other employees are
25 suing the City.

Page 150

1 Q. (BY MR. SWARTZ) You are now looking at a
2 document marked as Hammer 327. Do you recognize this
3 document?

4 A. Let me read it. (Reviewing document.)
5 Yes.

6 Q. How do you recognize this document?

7 A. I recognize it that you just handed it to me.
8 I'm looking at it. So I recognize that you handed it to
9 me and I'm looking at it.

10 Q. Have you seen it before today?

11 A. Yes, I've seen it before.

12 Q. Do you know who drafted this document?

13 A. The approval for the document was reviewed by
14 legal counsel.

15 Q. Mr. Naylor, Mr. King, some other attorney?

16 A. It could have been both. I don't recall at
17 that time. I believe it was Mr. Naylor.

18 Q. Did you approve this document to be posted in
19 the Idaho Mountain Express?

20 A. Yes, I gave the approval for the City staff to
21 take it to the Mountain Express, as a final step in the
22 approval of things taken to the Mountain Express.

23 Q. Do you know who paid for this ad to be posted
24 in the Idaho Mountain Express?

25 A. That would have been under the City of Sun

Page 151

1 Valley, under public information budget, or whatever the
2 category for budget for public information is.

3 Q. Did you participate in the drafting of this
4 ad?

5 A. Yes. I helped participate with it, yes.

6 Q. When did you begin drafting this?

7 A. I don't know exactly when I would have made
8 the decision to draft it. It's my statement to the city
9 council on January 19.

10 Q. That is the day after Sharon Hammer's
11 employment was terminated?

12 A. I don't know the date. If that's the date --
13 I don't know the exact date she was terminated. I don't
14 know the exact date of the statement.

15 Q. I misspoke. It was the city council meeting
16 on the 19th, so the same day as this statement is when
17 Ms. Hammer was terminated.

18 A. I can't confirm the exact dates. I don't know
19 the date of publication either of this. Is there a date
20 of publication?

21 Q. I'm not so certain about the date of
22 publication, but the statement is dated January 19th,
23 the city council meeting where she was terminated was on
24 January 19th. My question to you is: When did you
25 write this? Did you write it before the 19th? Did you

Page 152

1 write it on the 19th?

2 A. No. I would have written it after the
3 decision, because it states that the decision would have
4 been made after that. Pardon me.

5 The city council confirmed the action and
6 recommended -- so it would have been after. So the date
7 may be wrong. I don't know. And as I said, I don't
8 know the date of publication.

9 Q. When did you make the decision that you wanted
10 it terminate Ms. Hammer's employment?

11 A. I don't know the date of the city council
12 meeting. You'll have to look at the record to see the
13 date of the city council meeting when I made that
14 decision.

15 Q. Did you make that decision before January 19,
16 2012, which was the date of the city council meeting?

17 A. I don't terminate. You said -- could you
18 rephrase your question, because I recommend, but I don't
19 terminate. I think you said did I terminate.

20 Q. When did you make the decision to recommend
21 termination of Ms. Hammer's employment? Before the
22 19th?

23 A. I don't know the exact date. I don't know.
24 But it would have been at that council meeting.

25 Q. Did you consult with anybody before you

Page 153

1 reached your determination that you wanted to ask for
2 the termination of her employment?

3 A. I consulted with legal counsel.

4 Q. Mr. Naylor?

5 A. And probably Adam King.

6 Q. Did you review any documents as you were
7 working on your decision of what to do?

8 A. No. Only the employment agreement, the
9 provisions of a termination under the employment
10 agreement, that was all.

11 Q. Did you see the provision in the employment
12 agreement that stated if she was terminated for cause
13 that she would be entitled to a hearing?

14 A. Did I see that?

15 Q. Yes.

16 A. Well, I read her contract, so I must have seen
17 that provision.

18 Q. Any reason why you wouldn't want to give her a
19 hearing?

20 MR. NAYLOR: Object to the form.

21 THE WITNESS: I was not going to terminate
22 Sharon Hammer with cause. I was going to terminate her
23 without cause. So the other provisions were not
24 pertinent.

25 Q. (BY MR. SWARTZ) Why weren't you going to

Page 154

Page 156

1 terminate her with cause?

2 A. Why?

3 Q. Yes.

4 A. It was my determination that the termination,
5 which in my mind I had finally come to that conclusion,
6 was equitable for all concerned. It was the appropriate
7 action to take and it was the most equitable for all
8 concerned.

9 Q. What do you mean by "most equitable"?

10 A. Most equitable, fair to Sharon Hammer, that
11 being terminated without cause, as publicly stated,
12 without cause, that it would probably not affect her
13 employment in the future. And she could go on with her
14 life, the City could go on. I thought it was a
15 significant sacrifice to the City to pay six months.
16 And we paid additional fees of leave and vacation and
17 other things. And I felt it was probably in the best
18 interest and would put this behind us for all of us
19 concerned so we could all move on. And due cause was
20 not within my consideration.

21 Q. Was this a way -- using one of one your
22 phrases earlier, was this a way of taking Sharon Hammer
23 to the woodshed and being able to put a period at the
24 end of the sentence?

25 MR. NAYLOR: Object to the form.

1 taking time away from the entire situation, the Patty
2 Ball report, everything was taking time away from me
3 trying to dig in as a new mayor into the business of the
4 City, my attention to the management of the City's
5 business.

6 Q. (BY MR. SWARTZ) Do you recall that Jeff, Tina
7 and Nick Carnes were all on paid administrative leave
8 while criminal allegations were pending against them?

9 MR. NAYLOR: Object to the form.

10 Q. (BY MR. SWARTZ) They weren't terminated, they
11 were put on administrative leave?

12 A. By Mayor Willich?

13 Q. By you.

14 A. Weren't they on paid administrative leave by
15 Mayor Willich also?

16 Q. I'm talking about during your term when you
17 were the mayor and criminal allegations against the
18 Carnes came out and they were placed on paid
19 administrative leave. Do you recall that?

20 MR. NAYLOR: Object to the form.

21 THE WITNESS: I recall that I placed them on
22 paid administrative leave. I don't agree with your
23 preface to your question.

24 Q. (BY MR. SWARTZ) Why did you place them on
25 paid administrative leave?

Page 155

Page 157

1 THE WITNESS: Oh, no, no, no. That is a
2 misinterpretation of my statement of taking her to the
3 woodshed. Taking her to the woodshed means, in my mind
4 at that time when I made it, because I didn't know all
5 the facts before us, we had just presented this for the
6 first time, that maybe these are things that -- I don't
7 know how to phrase it -- could be corrected, modified in
8 some way that wouldn't have to result in termination.

9 But in response to a termination without
10 cause, I didn't think it would affect her employment,
11 because it's consistent with many executives in the
12 private sector, the public sector, that when they take
13 office, they become CEO, they want their own personnel,
14 and they want to be able to pick their own personnel. I
15 believe I answered the question.

16 Q. Do you see the second-to-the-last sentence in
17 your advertisement there which states: With this action
18 I will now be able to turn my attention to the
19 management of the City's business with a city
20 administrator for my administration"?

21 A. Yes.

22 Q. Was Sharon Hammer distracting your attention
23 from the management of the City?

24 MR. NAYLOR: Object to the form.

25 THE WITNESS: I think I referred to it was

1 A. When Chief Carnes -- I'm trying to think of
2 the chronologic scenario. When Mayor Willich brought
3 the Carnes off paid administrative leave, Chief Carnes
4 immediately retaliated against one of the whistleblowers
5 and had him locked out of the -- I believe it was -- I'm
6 not sure which. So I was advised that they should be
7 placed on administrative leave, partly because of --
8 paid administrative leave pending an investigation.

9 Q. Why didn't Sharon Hammer get the same
10 courtesy, remaining on paid administrative leave while
11 the investigation into her alleged criminal conduct
12 continued versus terminating her employment?

13 MR. NAYLOR: Object to the form; compound,
14 argumentative.

15 THE WITNESS: I didn't place her on paid
16 administrative leave.

17 Q. (BY MR. SWARTZ) You terminated her on January
18 19th.

19 A. Yes, without cause.

20 Q. While allegations of criminal misconduct and
21 investigations into her alleged conduct continued.

22 MR. NAYLOR: Object to the form.

23 THE WITNESS: Because that essentially wasn't
24 pertinent because I was terminating her without cause.

25 Q. (BY MR. SWARTZ) Did you look at terminating

Page 158

1 any member of the Carnes family versus put putting them
2 on paid administrative leave?
3 MR. NAYLOR: Object to the form.
4 THE WITNESS: Please repeat your question.
5 MR. SWARTZ: Would you mind reading that back.
6 (Record read back.)
7 THE WITNESS: At that time period, no. I
8 think they were on paid administrative leave.
9 Q. (BY MR. SWARTZ) Did you consider keeping Ms.
10 Hammer on paid administrative leave versus terminating
11 her employment?
12 MR. NAYLOR: Objection; asked and answered.
13 THE WITNESS: Yes. I believe I have answered
14 that. The decision was termination without cause.
15 Q. (BY MR. SWARTZ) Do you recall the City
16 stating that any employee who is mentioned in the
17 forensic audit would have an opportunity to review the
18 audit, comment on it before it was made public?
19 A. Forensic audit?
20 Q. Yes.
21 A. Would you read your statement back to me
22 again.
23 Q. Do you recall the City stating that any
24 employee mentioned in the forensic audit would have an
25 opportunity to review the audit and comment on it before

Page 159

1 it was made public?
2 A. No, because there was no intention to make it
3 public.
4 Q. The forensic audit?
5 A. Yes, at that particular time.
6 Q. At what particular time?
7 A. Well, the forensic audit was undergoing, and
8 the City did not release the forensic audit. The
9 prosecuting attorney for Blaine County released the
10 forensic audit. The City did not.
11 Q. The forensic audit or the Patty Ball report?
12 Are we are getting confused?
13 A. Forensic audit -- both, the City didn't
14 release either one. One was subpoenaed from the
15 suggestion from Patty Ball, that further investigation
16 be done and her suggestion was for further study. So
17 following her suggestion it was referred to the county
18 prosecutor for investigation. The forensic audit was an
19 entirely different matter.
20 Q. Did you meet --
21 A. You asked me a question, were employees
22 assured something about the forensic audit. Could you
23 repeat your question, so we can go back to where -- I'm
24 trying to complete my answer.
25 Q. Did you spend time meeting with employees

Page 160

1 whose name was mentioned in the forensic audit?
2 A. During the investigation, during the forensic
3 audit?
4 Q. After the forensic audit was completed --
5 A. Yes.
6 Q. -- and before it was turned over to the
7 prosecutor --
8 A. Yes.
9 Q. -- did you spend time with employees
10 discussing the audit with them?
11 A. Yes. I discussed, because I was told that
12 they had, yes, an opportunity to respond. And it was
13 never made public by the City. So yes, I did have
14 meetings with individuals that were named in the
15 forensic audit.
16 Q. Did you meet with Sharon Hammer about the
17 forensic audit?
18 A. No.
19 Q. Why?
20 A. Because she refused to meet with the auditors.
21 There is an e-mail from the auditors that on advisement
22 of her attorney that she refused to participate in the
23 forensic audit investigation. So if she refused to
24 participate in the investigation, then she was not under
25 the same category of being, quote, entitled to comment

Page 161

1 on the report, because she had refused to meet with the
2 auditors. All the other people met with the auditors.
3 Q. Was her name mentioned in the audit report?
4 A. Yes.
5 Q. And you didn't give her an opportunity to
6 comment on it?
7 MR. NAYLOR: Object to the form.
8 THE WITNESS: I believe I answered the
9 question.
10 Q. (BY MR. SWARTZ) Your answer is you didn't
11 give her an opportunity to comment on it; correct?
12 A. She said she didn't want to participate in it,
13 so there was no reason to ask her to comment. I was
14 advised under legal counsel, and the e-mail that she
15 sent was under advisement, I will paraphrase it, but
16 under the advice of my attorneys I will not be
17 participating in or meeting with the auditors. So if
18 she didn't meet with the auditors.
19 Q. Who told you that was the exception to the
20 direction, that anyone who is mentioned in the audit
21 report would have an opportunity to comment on it?
22 A. What direction are you referring to?
23 Q. You stated earlier that you were told that
24 anyone whose name was in the audit would have an
25 opportunity to comment on it.

Page 162

1 MR. NAYLOR: Object to the form.

2 Q. (BY MR. SWARTZ) Now I'm asking who told
3 you --

4 A. It was called name clearing hearings, which as
5 mayor, the responsibility fell on me to do that.

6 Q. Who told you that Sharon Hammer was not
7 entitled to a name clearing hearing?

8 MR. NAYLOR: Object to the form to the extent
9 it calls for attorney-client privilege. And let's take
10 a quick break. Let's see if that's where we are at.

11 (Recess taken.)

12 MR. NAYLOR: Would you reread the question.

13 THE WITNESS: Because I think I was confused
14 as to what you were asking for in a time sequence.

15 MR. NAYLOR: Would you read the pending
16 question.

17 (Record read back.)

18 THE WITNESS: No one did.

19 I was confused as to the sequence of what I
20 was talking about. I believe I was referencing in my
21 answer that after the audit was done that Sharon Hammer
22 had not wanted to meet with the auditors and cooperate.
23 And then I thought the question was she wanted to come
24 back and meet with the auditors. That wasn't your
25 question. Your question was, so no one told me that she

Page 163

1 didn't have the opportunity to ultimately respond to it.
2 So I was confused as to what we were talking about.

3 Q. (BY MR. SWARTZ) So you gave a number of
4 employees who were referenced in that report an
5 opportunity to come in and speak with you and have their
6 name clearing hearing; right?

7 A. Yes.

8 Q. You didn't reach out to Sharon Hammer to offer
9 her the same opportunity; correct?

10 A. That is not true.

11 Q. You did reach out to Sharon Hammer and invite
12 her to come to your office?

13 A. No. We went in a sequential manner with that.
14 There were employees and not employees of the City.
15 Now, it referred to disciplinary actions, possible
16 disciplinary actions for the employees that were still
17 employed by the City.

18 Ms. Hammer had left employment. Mayor Willich
19 had left employment of the City. So we started the name
20 clearing hearings, which took quite a few months, and
21 offered those that were still employees of the City the
22 opportunity to respond to the allegations of the
23 forensic audit report and have a names clearing hearing,
24 and then the decision would made as to any possible
25 disciplinary actions.

Page 164

1 But Ms. Hammer had already left employment, so
2 there was no -- and Mr. Willich had already left
3 employment. So before we got to those two we made a
4 sequential of the employees first, because it was a
5 combination of names clearing and possible disciplinary.

6 Then we were going to get to Ms. Hammer and we
7 were going to Mayor Willich. In the interim the county
8 prosecutor subpoenaed that, so it was taken out of our
9 hands, and it was taken out of my hands and was given to
10 the prosecutor. So there were no more opportunities for
11 me to have any other hearings after that because then it
12 was in the hands of the prosecutor.

13 So there is a difference. We started out --
14 we started out with name clearing hearings with those
15 still employed with the City, because it pertained to
16 possible disciplinary actions, as well as name clearing
17 for the other.

18 Mr. Willich, former Mayor Willich and Ms.
19 Hammer would have been given the opportunity later on,
20 or scheduled, but it was taken out of my hands. It was
21 taken out of our hands because the whole report was
22 subpoenaed by the prosecutor, and then subsequently made
23 public by the prosecutor. The process was interrupted
24 by the subpoena to take it away.

25 Q. Why do you believe that there is still not an

Page 165

1 opportunity for a name clearing hearing?

2 A. It's been made public by the prosecutor.

3 Q. Couldn't there still be a name clearing
4 hearing?

5 MR. NAYLOR: Object to the form.

6 THE WITNESS: No, because the City did not
7 publish it, the City did not want it made it public, and
8 it's been made public by another agency. So that ended
9 our process, that ended our participation with it.

10 Q. (BY MR. SWARTZ) Why do you believe that a
11 name clearing hearing cannot take place after this
12 report has been made public?

13 A. I just told you the answer. It depended on
14 legal counsel for that determination. That was the
15 outside legal counsel of the forensic audit, not
16 Mr. Naylor.

17 Q. Clay Gill --

18 A. Yes.

19 Q. -- told you that since it was made public you
20 couldn't give Sharon Hammer a name clearing hearing?

21 MR. NAYLOR: Object to the form of the
22 question. Instruct you not to answer to the extent it
23 calls for legal conclusions.

24 THE WITNESS: Okay.

25 MR. NAYLOR: Excuse me. Attorney-client

Page 166

Page 168

1 privileged communication. It's late in the day.

2 Q. (BY MR. SWARTZ) Mayor, I'm showing you your
3 affidavit again.

4 A. Is this something we've already gone over?

5 Q. Yes. This is your January 9, 2012 affidavit.

6 We have already gone over it. I'm going to start with
7 paragraph 8 and we are going to have a new round of
8 questions for you. Okay?

9 Did Ms. Hammer say anything on January 4, 2012
10 during your one and a half hours of discussion with her
11 that led you to believe that you couldn't work with her
12 as a city administrator?

13 A. Repeat the question, please. I'm trying to
14 digest the paragraph, the context of your question.

15 Q. On January 4, 2012 when you spent an hour and
16 a half speaking with Ms. Hammer, did she state anything
17 to you that led you to believe that she was a city
18 administrator that you could not work with?

19 A. I can't think of anything specific, because as
20 I previously testified, I believe it was primarily spent
21 with Ms. Hammer telling me that she didn't do anything
22 wrong.

23 Q. Was there anything -- I'll have you turn to
24 the next page. We are going to go down the list on
25 paragraph 10. Was there anything about the Ball report

1 A. But you are going back and asking me some
2 other questions again repetitively.

3 Q. No, Mayor, I'm trying to get an understanding
4 of why you believed you could not work with Sharon
5 Hammer. And I'm going to ask you about each one of
6 these bullet points as to whether they factored in to
7 your belief that you could not work with Sharon Hammer.

8 I understand that in this affidavit they are
9 listed as reasons why you placed her on administrative
10 leave, but I'm asking you in these questions whether
11 they factored into your determination that you could not
12 work with her. Do you understand?

13 MR. NAYLOR: And that's what he's already
14 testified to, that he didn't factor in. They dealt with
15 the administrative leave.

16 MR. SWARTZ: I appreciate that was him trying
17 to make a clarification.

18 Q. (BY MR. SWARTZ) I'm now asking you whether
19 they factored into your belief you couldn't work with
20 Ms. Hammer. And I can just ask you: Did any of these
21 items listed in your affidavit lead you to believe that
22 you could not work with Ms. Hammer?

23 A. I don't believe directly, no.

24 Q. Indirectly?

25 A. No, it may be part of an overall perception,

Page 167

Page 169

1 that led you to believe that Ms. Hammer was a city
2 administrator that you could not work with?

3 MR. NAYLOR: Object to the form; asked and
4 answered.

5 THE WITNESS: I believe I already have
6 answered that question.

7 Q. (BY MR. SWARTZ) That's the first time I've
8 asked it actually.

9 A. On the Ball report, we've had a number of
10 questions on the Ball report.

11 Q. So this question is getting to you --

12 A. This is different from the other questions?

13 Q. Yes. You've stated that the reason that you
14 terminated Ms. Hammer's employment was that you didn't
15 feel like you could work with her, right?

16 MR. NAYLOR: Object to the form; that is
17 partial.

18 THE WITNESS: Yes. Let me go back again.
19 That Ms. Hammer, I recommended termination of Ms. Hammer
20 on the basis of without cause, and the without cause was
21 my determination.

22 Now you are going to the Ball report? And
23 these, again, were pertaining to paid administrative
24 leave, not to termination.

25 Q. (BY MR. SWARTZ) I understand that.

1 but not individual bullet points, no. It could have
2 been.

3 MR. SWARTZ: I have to excuse myself to grab
4 my notes. I'll be right back.
5 (Off the record.)

6 Q. (BY MR. SWARTZ) Do you recall Kelly Ek filing
7 a tort claim against the City of Sun Valley?

8 A. Yes.

9 Q. Did you have any role in the decision to
10 settle that claim?

11 A. Not directly I don't believe I had. I believe
12 that was a settlement between ICRMP and Kelly Ek, I
13 believe. I didn't determine the parameters of that. I
14 don't know. I don't know whether it was -- I don't
15 believe the council had approved it or not approved it.
16 I think the council was informed. I'm not sure of the
17 sequence of the scenario.

18 Q. Whether you had the ability to weigh in on the
19 decision to settle that claim, did you have a personal
20 feeling one way or the other whether the claim should be
21 settled?

22 MR. NAYLOR: Object to the form; relevance.

23 THE WITNESS: Are you referring to a specific
24 tort form letter?

25 Q. (BY MR. SWARTZ) Kelly Ek made a claim for

Page 170

1 money against the City saying that she was wronged, and
2 the City settled that. Did you have a personal feeling
3 one way or the other whether that should have occurred?
4 A. No.
5 Q. Do you recall Michelle Frostenson making a
6 tort claim against the City?
7 A. Yes.
8 Q. Do you know what happened to that tort claim?
9 A. I don't know exactly what happened to it, no,
10 I don't.
11 Q. Did you have any role in the decision making
12 with regard to that claim?
13 A. No.
14 MR. SWARTZ: Kirt, are you going to have to
15 follow up?
16 MR. NAYLOR: No.
17 MR. SWARTZ: Let's take two minutes. We are
18 real close.
19 (Recess taken.)
20 Q. (BY MR. SWARTZ) Mayor Briscoe?
21 A. Yes, sir.
22 Q. You stated earlier, and correct me if I'm
23 wrong, but you felt like it was important to place this
24 paid ad regarding the decision to terminate Ms. Hammer's
25 employment; is that correct?

Page 171

1 A. Yes. For open and transparent government,
2 yes, to let the citizens know what is being done in
3 their government.
4 Q. And you also stated that you felt like it
5 would be good for Sharon Hammer and for her prospective
6 employment inquiries?
7 A. No, that is not what I said. I said I felt
8 that the decision to terminate her without cause would
9 be in the best interest of all concerned.
10 Q. Why is that?
11 A. I've already answered that question.
12 Q. Did it relate to her ability to --
13 A. You are asking about a press release, and the
14 press release doesn't refer to that.
15 Q. No, it doesn't, does it? It doesn't state how
16 her employment was terminated, does it?
17 A. I guess it does. It says in the employment
18 agreement under the provision of section 3, paragraph A,
19 which provides for immediate termination, lump sum
20 severance pay equals six weeks salary.
21 Q. Does this paid ad reference cause or no cause?
22 A. It has to because it lists the paragraph and
23 the section that alludes to that.
24 Q. Do you know the general public are aware of
25 section 3, paragraph A of her contract means a

Page 172

1 termination without cause?
2 MR. NAYLOR: Object to the form; calls for
3 speculation.
4 Q. (BY MR. SWARTZ) Did you publish the contract
5 section along with this paid ad?
6 A. No.
7 Q. Did you publish the contract?
8 A. No.
9 Q. Did you ever publicly disclose that the
10 termination of her employment was without cause?
11 A. Publicly, you said did I publicly?
12 Q. Yes. Did you go to Idaho Mountain Express and
13 state, I terminated her employment without cause?
14 A. I was probably asked that question by the
15 Mountain Express reporter, yes, because they were on top
16 of all of this asking questions about it. I may have.
17 Q. Did you make a conscious decision not to
18 reference cause or without cause in this paid ad?
19 A. No, there was no intent to not personally. We
20 have a number of citizens at the City that do go in and
21 look into all this and file public information requests
22 and do know what the paragraph is and what is going on
23 within the City.
24 Q. Were you concerned about Sharon's reputation
25 as a result of termination of her employment?

Page 173

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: Rephrase the question.
3 Q. (BY MR. SWARTZ) Were you at all concerned
4 about Sharon's reputation being damaged as a result of
5 the termination of her employment?
6 MR. NAYLOR: Object to the form.
7 THE WITNESS: That I can't answer yes or no,
8 because I have already answered that I felt it was in
9 the best interest of handling the contract in that way,
10 that it would be without cause, which would be
11 essentially not damaging to her reputation.
12 Q. (BY MR. SWARTZ) Is it important not to damage
13 a former employee's reputation?
14 MR. NAYLOR: Object to the form.
15 THE WITNESS: Well, it must be because
16 Mr. Donoval came up to the podium after I made the
17 decision and thanked me twice and said, Mayor, you've
18 made the right decision. And the first time I thought
19 he was saying it in a sarcastic way. The second time I
20 realized he was sincere.
21 Q. (BY MR. SWARTZ) Do you think it's important
22 not to tarnish a former employee's reputation?
23 MR. NAYLOR: Object to the form.
24 THE WITNESS: As a general philosophy, yes.
25 Q. (BY MR. SWARTZ) Did you undertake any effort

Page 174

1 to communicate with the Blaine County Prosecutor's
2 Office your concerns about the forensic audit or the
3 Patty Ball report being made public?
4 A. I didn't have any conversation of any kind
5 with the prosecuting attorney.
6 Q. Did you ask them not to make it public when
7 you responded to the subpoena?
8 A. We just responded to the subpoena without
9 clarification and without any comment. It was
10 subpoenaed; here it is.
11 Q. Were you concerned that the Patty Ball report,
12 which you kept under lock and key, was going to be made
13 public once it was turned over to the prosecutor?
14 A. We felt it would not be made public, and I
15 think there was some communication to me that the Blaine
16 County Prosecutor was not going to make to public. It
17 was somewhat to my surprise when he did make it public
18 in response to public information requests, I believe.
19 I don't know whether he did or whether he
20 didn't in regards to Mountain Express public information
21 requests. I didn't have any conversation with Jim
22 Thomas about this in any way, not that I can recall.
23 Q. Who told you then that it would not be made
24 public?
25 THE WITNESS: Please, could you read back what

Page 175

1 my comment was, exactly what I said.
2 MR. SWARTZ: It was about three answers ago.
3 (Record read back.)
4 THE WITNESS: What was your question again?
5 Q. (BY MR. SWARTZ) Who communicated to you that
6 it would not be made public?
7 A. I don't believe I received a -- perhaps in
8 conference with attorneys. I don't know. I don't know
9 the exact, where that might have come from. It was my
10 understanding that if something is being subpoenaed for
11 a criminal investigation, it's all kept private and not
12 made public. That was the impression that I got, that
13 it would be a possible criminal investigation, so it
14 would certainly not be made public. I don't know if it
15 was an assumption or whether it was told by the lawyers.
16 I don't know, but we were surprised.
17 Q. Who did you hire to replace Sharon Hammer?
18 A. Her name is Virginia Egger.
19 Q. Was she previously employed with the City?
20 A. Yes.
21 Q. Do you know how her employment ended?
22 A. I was shown two letters in regards to her
23 employment. One letter was that she wanted to spend
24 time with her daughter or family in the East, and there
25 was another letter I believe from the mayor thanking her

Page 176

1 for her services, and there was some remuneration. And
2 that is all I knew about it at the time.
3 Q. After you brought her on did you catch some
4 heat from some folks for bringing her back?
5 A. Yes.
6 Q. Why is that?
7 A. That was ideological, political in nature
8 primarily. She was, I'll use the term pretty left wing,
9 and we have a lot of constituents who are ideologically
10 conservative. And they felt that there was an issue
11 over affordable housing and other issues within the City
12 and land use decisions. And there was a segment of
13 population, I think the -- rephrase your question, and
14 I'll keep answering if I can.
15 Rephrase your question. I don't mean to be
16 verbose and keep going on.
17 Q. I was just asking why you caught heat.
18 A. I'm answering because it was primarily over
19 objections to her political views.
20 Q. Did you allow Virginia Eggers to use City
21 mileage to travel back to New York for personal reasons?
22 A. At what time frame?
23 Q. While you were the mayor and while she was
24 serving as the city administrator.
25 A. In her contract there was a provision that she

Page 177

1 could use mileage credits for City credit cards, that
2 she wanted some time off within a particular period,
3 something to do with her family, and she wanted to use
4 the City mileage credits if available for that.
5 Q. And you allowed it?
6 A. I don't believe she took the mileage credits.
7 I don't know.
8 Q. Have you ever undertaken any effort to evade
9 service of process on you?
10 MR. NAYLOR: Object to the form. How is that
11 relevant in this case?
12 MR. SWARTZ: It goes to credibility.
13 MR. NAYLOR: In what way?
14 MR. SWARTZ: You can make your objection and
15 we can move to strike all of this later.
16 MR. NAYLOR: Unless you can tell me how that
17 is relevant, I will instruct him not to answer.
18 MR. SWARTZ: It goes to his credibility.
19 MR. NAYLOR: In what way? What is credibility
20 of evading service?
21 MR. SWARTZ: I'm not going to discuss it with
22 you. If you are going to instruct him not to answer, we
23 can reconvene at a later date. You've made your
24 objection. We can strike it from the record later if
25 you want it ruled upon.

Page 178

1 MR. NAYLOR: Yeah. Well, let me take a break.
2 (Recess taken.)
3 MR. NAYLOR: Go ahead and read the pending
4 question.
5 (Record read back.)
6 MR. NAYLOR: Same objection. Go ahead and
7 answer.
8 THE WITNESS: I don't know what you mean by
9 "evade."
10 Q. (BY MR. SWARTZ) At one point in time did you
11 own property up in Seattle?
12 A. Yes.
13 Q. And was that property the subject of -- did
14 you understand that someone was trying to serve you with
15 papers at that property?
16 A. No.
17 MR. NAYLOR: What time frame are we talking
18 about?
19 MR. SWARTZ: Ever.
20 Q. (BY MR. SWARTZ) Did Nils Ribi lend you a car
21 so you could remain incognito while you were in the Sun
22 Valley area so that you could avoid service process?
23 MR. NAYLOR: Object to the form.
24 THE WITNESS: No.
25 Q. (BY MR. SWARTZ) Has Nils Ribi ever lent you a

Page 179

1 vehicle?
2 A. Yes.
3 Q. What was the purpose of that?
4 A. I don't recall. That was some time ago, some
5 years ago. I don't recall. But I don't think I was
6 evading service.
7 Q. Was it because you didn't want to be seen in
8 your own vehicle?
9 MR. NAYLOR: Object to the form; relevance.
10 THE WITNESS: I don't think so.
11 Q. (BY MR. SWARTZ) Have you ever been charged
12 with a crime?
13 MR. NAYLOR: Object to the form; relevance.
14 THE WITNESS: No.
15 Q. (BY MR. SWARTZ) To your knowledge have you
16 had charges filed against you for stalking?
17 MR. NAYLOR: Criminal charges?
18 MR. SWARTZ: Charges, a charge filed against
19 him for stalking.
20 MR. NAYLOR: A criminal charge? Are you
21 asking was he ever charged with a criminal charge for
22 stalking?
23 MR. SWARTZ: Just a charge of stalking.
24 MR. NAYLOR: Then I'll object and instruct you
25 not to answer. That doesn't have anything to do with

Page 180

1 credibility, relevance, or anything in this case. I'll
2 instruct him not to answer.
3 MR. SWARTZ: It does go to credibility, and
4 relevance is not the standard for this deposition. It
5 is for trial.
6 MR. NAYLOR: And it's also would it lead to
7 the discovery of admissible evidence.
8 MR. SWARTZ: That's right.
9 MR. NAYLOR: So what evidence would be
10 admissible?
11 MR. SWARTZ: When he gives us the answer,
12 we'll know.
13 MR. NAYLOR: That is not the way to go about
14 it. I'll instruct him not to answer. And you can mark
15 it and take it up.
16 MR. SWARTZ: We'll be back a different day.
17 Q. (BY MR. SWARTZ) Mayor Briscoe, do you have
18 anything you need to clarify or correct about your
19 testimony today?
20 A. No.
21 Q. Do you have anything that you need to add?
22 A. No. I'll want to see the transcript.
23 Q. Of course.
24 Have you been a party to any lawsuits, other
25 than the ones that we are here about today?

Page 181

1 A. Yes.
2 Q. What were the nature of those lawsuits?
3 A. There may been some back in my professional
4 career as a maxillofacial surgeon. There may have been,
5 but there was nothing that I ever went to trial with in
6 that respect.
7 Repeat your question again.
8 Q. Other than the two lawsuits that we are here
9 about today, do you have any other lawsuits that are
10 currently pending against you?
11 A. No.
12 MR. NAYLOR: Do you want to make a proffer of
13 what you are talking about here to assist in any kind of
14 objection?
15 MR. SWARTZ: No. We'll just take it all up
16 with the judge.
17 MR. NAYLOR: Well, it puts us at a
18 disadvantage because you are asking some open-ended
19 question that is not relevant or could lead to
20 admissible evidence.
21 MR. SWARTZ: It goes to credibility.
22 MR. NAYLOR: Well, without knowing any details
23 it's hard to know that it would, and any judge would ask
24 you, Where are you headed with that?
25 MR. SWARTZ: Credibility.

Page 182

1 MR. NAYLOR: Right. But factually what are
2 you talking about? If there is anything you want to put
3 on the record as a proffer to assist, then otherwise the
4 way you've asked the question, it's objectionable.
5 MR. SWARTZ: We'll file the proffer with the
6 judge.
7 MR. NAYLOR: Okay. Then that would prevent me
8 from having an opportunity now to make a decision on how
9 to advise my client because you are withholding the
10 proffer from me.
11 MR. SWARTZ: I don't have the documents.
12 We'll file it with the judge. You guys can respond.
13 And then if we come back a different day, we'll come
14 back a different day.
15 MR. NAYLOR: Just making my record.
16 MR. SWARTZ: Yes.
17 MR. NAYLOR: We'll read and sign.
18 MR. SWARTZ: Thank you everybody for your
19 time.
20 (Deposition concluded at 4:22 p.m.)
21 (Signature requested.)
22
23
24
25

Page 183

1 CERTIFICATE OF WITNESS
2 I, DeWAYNE BRISCOE, being first duly sworn,
3 depose and say:
4 That I am the witness named in the foregoing
5 deposition, consisting of pages 1 through 185; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct, except for any changes that I may have listed
10 on the Change Sheet attached hereto:
11 DATED this ____ day of ____, 20__.
12
13
14
15 DeWAYNE BRISCOE
16
17 SUBSCRIBED AND SWORN to before me this ____ day
18 of ____, 20__.
19
20
21 NAME OF NOTARY PUBLIC
22 NOTARY PUBLIC FOR ____
23 RESIDING AT ____
24 MY COMMISSION EXPIRES ____
25

Page 184

1 ERRATA SHEET FOR DeWAYNE BRISCOE
2 Page ____ Line ____ Reason for Change ____
3 Reads ____
4 Should Read ____
5
6 Page ____ Line ____ Reason for Change ____
7 Reads ____
8 Should Read ____
9
10 Page ____ Line ____ Reason for Change ____
11 Reads ____
12 Should Read ____
13
14 Page ____ Line ____ Reason for Change ____
15 Reads ____
16 Should Read ____
17
18 Page ____ Line ____ Reason for Change ____
19 Reads ____
20 Should Read ____
21
22 Page ____ Line ____ Reason for Change ____
23 Reads ____
24 Should Read ____
25 You may use another sheet if you need more room.
WITNESS SIGNATURE ____

Page 185

1 REPORTER'S CERTIFICATE
2 I, BEVERLY BENJAMIN CSR No. 710, Certified
3 Shorthand Reporter, certify: That the foregoing
4 proceedings were taken before me at the time and place
5 therein set forth, at which time the witness was put
6 under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 6th day of June 2014.
17
18
19
20
21 BEVERLY A. BENJAMIN, CSR No. 710
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 28, 2019

EXHIBIT 26
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 26
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
 Plaintiffs,) Case No. 1:13-cv-211-EJL
vs.)
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
 Defendants.)
_____)

DEPOSITION OF NILS A. RIBI

MAY 30, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public

Page 2

Page 4

1 THE DEPOSITION OF NILS A. RIBI was taken on
2 behalf of the Plaintiffs at the offices of Jones &
3 Swartz, 1673 W. Shoreline Drive, Suite 200, Boise,
4 Idaho, commencing at 9:12 a.m. on May 30, 2014, before
5 Beverly A. Benjamin, Certified Shorthand Reporter and
6 Notary Public within and for the State of Idaho, in the
7 above-entitled matter.

8 APPEARANCES:

9 For Plaintiffs:

10 Jones & Swartz, PLLC
11 BY MR. ERIC B. SWARTZ
12 1673 W. Shoreline Drive, Suite 200
13 Boise, Idaho 83702

14 For Defendants:

15 Naylor & Hales, PC
16 BY MR. KIRTLAN G. NAYLOR
17 950 W. Bannock Street, Suite 610
18 Boise, Idaho 83702

20 ALSO PRESENT: Sharon Hammer
21
22
23
24
25

1 NILS A. RIBI,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4

5 EXAMINATION

6 QUESTIONS BY MR. SWARTZ:

7 Q. Please state your legal name.

8 A. Nils Andrew Ribí.

9 Q. Mr. Ribí, you understand that you've just been
10 administered and have accepted the oath to tell the
11 truth today?

12 A. Yes.

13 Q. And you understand that the testimony you are
14 going to give carries the same force and effect as
15 testimony given in a court of law?

16 A. Yes.

17 Q. I know you've had an opportunity to sit
18 through many depositions in these cases. If I recall
19 correctly, it would be Sharon's, Jim's, Mayor Briscoe's,
20 Mayor Willich's, Mr. Youngman's, Mr. Suhadolnik,
21 Ms. Griffith's -- did I miss any?

22 A. No.

23 Q. You weren't there for Mr. Daggett's.

24 A. No.

25 Q. And you weren't there for Michelle

Page 3

Page 5

1 I N D E X		
2	TESTIMONY OF NILS A. RIBI	PAGE
3	Examination by Mr. Swartz	4
4		
5 E X H I B I T S		
6 NO.	DESCRIPTION	PAGE
7 1	E-mail from Sharon Hammer to Wayne	16
8	Willich, 9/30/2010, Subject: Harassment	
9	Policy, with attached Harassment Policy	

1 Frostenson's.
2 A. Correct.
3 Q. So I know you have a pretty good idea of how
4 the process rolls. A couple of helpful hints, I know
5 you've heard these before, we'll just run through them
6 quickly.
7 Beverly is taking down everything that is said
8 here today. To help her make the most accurate
9 transcript possible, let's try to speak one at a time.
10 Okay?
11 A. Yes.
12 Q. And if you can answer audibly, sometimes we'll
13 have to remind each other, I'm sure. Stay away from the
14 head shakes, the huh-uhs or the uh-huhs. We need yeses,
15 nos, or a spoken narrative as the question may require.
16 Okay?
17 A. Yes.
18 Q. If I ask a question that you do not
19 understand, please stop me and ask me to rephrase it.
20 If you do answer a question, it will be understood that
21 you understood the question. Okay?
22 A. Yes.
23 Q. If you don't know the answer to a question
24 that I ask, please state that you do not know rather
25 than guess, as I'm only looking for your personal

Page 6

1 knowledge. Okay?
2 A. Yes.
3 Q. If at any time during your deposition today
4 you realize that something you have said needs to be
5 clarified, corrected or added to, please stop me and
6 let's get that done on the record today. Okay?
7 A. Yes.
8 Q. Any questions about the process?
9 A. No. I understand I have an opportunity to
10 correct it, the deposition afterwards, two weeks later,
11 or whenever it is presented to me to review the written
12 portion?
13 Q. You have an opportunity to review it and sign
14 it and make corrections that are typographical in
15 nature. Corrections such as, today, for example, you
16 answer the light was red and you subsequently say in a
17 change sheet the light is green, that is something that
18 I can comment on as a change in testimony. But if it's
19 Nils Ribí and Ribí is spelled R-i-b-y in the transcript
20 and you correct it to R-i-b-i, that would be an
21 appropriate change.
22 A. Okay. Could I ask you to pronounce my name
23 REE-BEE.
24 Q. It's Ribí, like R-E-E-B-I?
25 A. Yes.

Page 7

1 Q. I may slip up because in my mind I've been
2 saying Ribí for a very long time.
3 A. I've been hearing it for a very long time.
4 Q. I'll do my best.
5 A. This is my opportunity to finally speak up, so
6 thank you.
7 Q. You are here pursuant to notice that asked you
8 to bring with you materials that in any way supports any
9 denial, allegation, or affirmative defense asserted by
10 you in both the state and the federal case. Have you
11 brought anything with you today?
12 A. Not today.
13 MR. NAYLOR: All of those, any documents that
14 are responsive to that have been produced in discovery.
15 MR. SWARTZ: Those specifically have been
16 produced marked as Ribí Bates numbered documents?
17 MR. NAYLOR: No. They may be SV documents.
18 They've been produced by the defendants, because there
19 is a lot of crossover.
20 Q. (BY MR. SWARTZ) Mr. Ribí, if there is a
21 particular document you need to see today to refresh
22 your recollection to answer a question, please let me
23 know. Part of why we ask you to bring things with you
24 is so that you would have them available. Since you
25 didn't bring anything with you today, we'll have to kind

Page 8

1 of work off the cuff.
2 A. Yes, I provided all those documents to my
3 attorney.
4 Q. And so I presume if you need to reference
5 those, we'll have a copy of them. You can tell us what
6 you need in order to answer the question, and we'll go
7 grab it for you. Okay?
8 A. Yes.
9 Q. Did you, other than speak with Mr. Naylor, did
10 you do anything to prepare for your deposition today?
11 A. No.
12 Q. Were there any documents in particular that
13 you reviewed?
14 A. No.
15 Q. Having sat through the number of depositions
16 that we've already rattled off today, you've had an
17 opportunity to hear many people testify about many
18 things that transpired regarding Ms. Hammer, and I
19 noticed during each of those depositions you were
20 dutifully taking notes, including yesterday. You don't
21 have your binder with you today I notice; is that right?
22 A. That's correct.
23 Q. I would invite you to go get that binder so
24 that you can refer to it if you need. It seems that any
25 of those notes you may have taken during any of those

Page 9

1 depositions may assist you today. If you'd like, we can
2 take a break now and you can go get it.
3 MR. NAYLOR: Those notes are all addressed to
4 me. They are attorney-client privileged, so he wouldn't
5 need -- do you need it for your deposition today?
6 THE WITNESS: No.
7 MR. SWARTZ: He may.
8 Q. (BY MR. SWARTZ) I'll still invite you. I
9 don't want to see them, but if you need to review
10 them --
11 A. I don't need them. Those were prepared for
12 the attorney. They are attorney-client.
13 Q. So how about testimony that you have heard
14 that you disagree with?
15 A. Testimony I've heard that I disagree with.
16 Could you explain that.
17 Q. Sure. Did Mayor Briscoe deliver any testimony
18 yesterday that you disagreed with?
19 A. Not that I'm aware of.
20 Q. Did Mayor Willich deliver any testimony that
21 you disagreed with?
22 A. Yes.
23 Q. What did you disagree with?
24 A. Pretty much all of what he said.
25 Q. Can you be more specific?

Page 10

1 A. I would have to look at the transcript and
2 then go through it with you.
3 Q. That's part of why I'm thinking that your
4 notes are going to have things in there where you are
5 indicating what he just said is wrong. Do your notes
6 contain stuff like that that you could to refer to?
7 Again, I don't need to see them.
8 A. Not necessarily.
9 Q. But they may?
10 A. Those notes don't necessarily relate to that.
11 Those notes relate to attorney-client discussions.
12 Q. I don't want to see them, but I want you to be
13 able to review them. What I'm asking you is, is there
14 something you disagree with about Wayne Willich's
15 testimony?
16 A. If you have specific questions for me, please
17 ask them about his testimony.
18 Q. That is my specific question. Anything that
19 he said you disagreed with?
20 A. And I said yes, pretty much everything he
21 said.
22 Q. Including when I asked him what is his legal
23 name was?
24 A. Those obvious things, no. I don't disagree
25 with that, but regarding the case.

Page 11

1 Q. Okay. What about Mr. Youngman?
2 A. What about Mr. Youngman?
3 Q. Anything in his testimony that you disagreed
4 with?
5 A. No. There may have been a few nuances about
6 particular dates of when things happened, but those are
7 just minor, and it's not that I disagreed with them.
8 Q. Anything in Franz Suhadolnik's deposition
9 testimony that you disagreed with?
10 A. I would have the same answer as I gave you for
11 Mr. Youngman.
12 Q. How about Michelle Griffith's testimony,
13 anything you disagreed with there?
14 A. I'd give you the same answer as Mr. Youngman.
15 Q. What about Mayor Briscoe, anything that he
16 testified to that you disagreed with?
17 A. I would give you the same answer as I would
18 for Mr. Youngman.
19 Q. Any testimony by Sharon Hammer that you
20 disagreed with?
21 A. I would give you the same answer as I would
22 for Mayor Willich.
23 Q. Any testimony from James Donoval that you
24 disagreed with?
25 A. I would give you the same answer as I would

Page 12

1 for Mayor Willich.
2 Q. When did you first become aware of the
3 harassment allegations being made against you by Sharon
4 Hammer?
5 A. At the end of the November 11, 2011 special
6 city council meeting.
7 Q. Was that the end of the executive session or
8 the end of the public session?
9 A. I don't recollect exactly when that was, but
10 it was near the end of that meeting.
11 Q. As I understand what transpired there, it
12 looks like this is the way it happened for all meetings.
13 There is a public session, you recess into an executive
14 session, and then you go back into a public session; is
15 that right?
16 A. Correct.
17 Q. When you are saying it's near the end of that
18 meeting, you can't delineate whether it was the
19 executive session or the public session?
20 A. To the best of my recollection, the executive
21 session ended and then there was a very short public
22 session, probably for a couple of minutes and then it
23 was over.
24 Q. How did you learn of the harassment
25 allegations made against you?

Page 13

1 A. Mayor -- could you rephrase that question.
2 Q. Sure. How did you learn of the harassment
3 allegations being made against you?
4 A. Against me?
5 Q. Yes.
6 A. That I learned after the meeting was over.
7 Q. Who informed you of those allegations?
8 A. That was informed to me by Michelle
9 Frostenson.
10 Q. Did she state how she knew of the allegations
11 that Sharon Hammer was alleging against you?
12 A. Could you repeat the question.
13 Q. Did Michelle Frostenson share with you how she
14 came to know of Ms. Hammer's allegations against you?
15 A. I'm sorry, one more time.
16 Q. Michelle Frostenson came to you after the
17 November 11 meeting and said, Sharon Hammer is making
18 harassment allegations against you; correct?
19 A. No, she did not come to me.
20 Q. She shared with you after that meeting, if I
21 understand your testimony correctly.
22 A. Yes.
23 Q. Did she relate to you how she knew of the
24 harassment allegations?
25 A. Yes.

Page 14

1 Q. What did she state?

2 A. She stated -- and this is just to the best of
3 my recollection. It was in a phone conversation, that
4 she felt that Sharon Hammer had come to her and told her
5 that I had been harassing her and that Sharon Hammer had
6 told her that I had been harassing Michelle Frostenson.
7 And Michelle Frostenson said something to the effect
8 that, no, he hadn't been harassing her, and that Sharon
9 Hammer tried to bring Michelle Frostenson into that
10 whole thing. And she said that she just blew Sharon off
11 on that and didn't want to be involved.

12 Q. If I recall correctly, Michelle Frostenson was
13 present at the November 11 meeting; correct?

14 A. Yes.

15 Q. If I understand your testimony correctly, she
16 phoned you after that meeting to share this information
17 with you; is that right?

18 A. No.

19 Q. Can you correct my understanding of your
20 testimony?

21 A. In what way?

22 Q. Did you not state that Michelle Frostenson
23 phoned you?

24 A. She did not phone me.

25 Q. How did this conversation transpire?

Page 15

1 A. I phoned her.

2 Q. After the November 11 meeting?

3 A. Correct.

4 Q. Why did you phone her after the November 11
5 meeting?

6 A. Because during the meeting at the very end
7 Mayor Willich made some very -- I don't know even know
8 the word, just some vague allusion to something about
9 harassment after he had proposed giving Sharon Hammer a
10 three-month severance package. He said the reason he
11 wanted to do that was because there was something about
12 harassment or something like that, and that he thought
13 that would be appropriate.

14 And everybody questioned him, What is that all
15 about? And he said, I'm not going to say anything. And
16 someone, I don't know who, someone said, Who knows
17 anything about this? And Michelle Frostenson said, I
18 do. And then Mayor Willich shut her up. So that is why
19 I called her after the meeting.

20 Q. Do you know if any other council members
21 contacted her about the harassment?

22 A. I don't know.

23 Q. Did you discuss what you learned from Michelle
24 Frostenson with any of the council members?

25 A. Not that I'm aware of.

Page 16

1 Q. Did you discuss it with Sharon Hammer?

2 A. No.

3 Q. Did you discuss it with Mayor Willich?

4 A. No.

5 Q. Did you discuss it with anyone other than
6 Michelle Frostenson?

7 A. Not that I'm aware of.

8 Q. Did Mayor Willich share with the city council
9 during that executive session on the 11th why he was not
10 going to elaborate on the harassment?

11 A. No.

12 Q. Did anyone ask?

13 A. Not that I'm aware of.

14 MR. SWARTZ: These aren't Bates numbered, but
15 they have been previously produced. Let's mark this
16 one.

17 (Exhibit I marked.)

18 Q. (BY MR. SWARTZ) Mr. Ribí, you've just been
19 handed what has been marked as Exhibit I. This is an
20 e-mail from Sharon Hammer to you cc'ing Mayor Willich
21 and attaching a harassment policy. Do you recognize
22 Exhibit I?

23 A. No, I don't.

24 Q. Do you have any recollection of requesting a
25 copy of the harassment policy in September of 2010?

Page 17

1 A. No, I don't.

2 Q. Do you have any recollection of any
3 discussions with Mayor Willich about your treatment of
4 Sharon Hammer before November 11, 2011?

5 A. No.

6 Q. Have you ever stated to Sharon Hammer that you
7 believed Mayor Willich didn't know what his job was?

8 A. Have I ever stated --

9 Q. To Sharon Hammer that you believed Mayor
10 Willich did not know what his job was?

11 A. No.

12 Q. Did you ever indicate anything to that effect
13 when you would go to Sharon Hammer, ask her to do
14 something, she would tell you, Hey, I take my directions
15 from the mayor, and you would respond in any way that
16 would suggest that you believed the mayor didn't know
17 what his job was?

18 A. Could you restate -- could you repeat that
19 question. It was a long one.

20 Q. Yes. Did you ever go to Sharon Hammer while
21 you were sitting on the city council, ask her to do a
22 task and her response to you was, I take my direction
23 from the mayor?

24 A. No.

25 Q. That never transpired?

Page 18

Page 20

1 A. No.
2 Q. Never happened.
3 A. No.
4 Q. Did she ever tell you no to one of your
5 requests and direct you instead to make the request to
6 the mayor?
7 A. No.
8 Q. You were about to make a point and I cut off
9 your finger. What was the interjection that you were
10 wanting to make?
11 A. There were times when Mayor Willich would,
12 based on e-mails that I had received from either Mayor
13 Willich or Administrator Hammer regarding working on
14 policies or programs or whatever it was, would invite me
15 to review documents or see things and to meet with them,
16 so on and so forth, and then we would have those
17 discussions. Those documents exist.
18 Q. You would have discussions about the existence
19 of documents?
20 A. No. We would have discussions about projects
21 and working on things. Those were all based on meetings
22 that were set up or requests that were made for me to
23 review things or to come in and talk about things with
24 him.
25 Q. You don't have any recollection of Sharon

1 backup or data for various issues that were in front of
2 us, but that was a frustration everyone felt.
3 Q. That frustration you believe was caused by Ms.
4 Hammer's failure to perform her job?
5 A. I don't think that's a failure to perform the
6 job. I think that was just certain information was not
7 available at certain times.
8 Q. So my question to you is whether you observed
9 Ms. Hammer not performing her job. Can you think of any
10 occasions where that may have occurred?
11 A. Not that I'm aware of.
12 Q. Do you recall Mayor Briscoe's description from
13 yesterday about how the finances of the City, financial
14 expenditures of the City were approved?
15 A. In general.
16 Q. Do you have anything to add to Mayor Briscoe's
17 description?
18 A. I have my own opinions about finances.
19 Q. What is your personal knowledge of how
20 financial expenses of the City were approved while you
21 sat as a city council member during Sharon Hammer's
22 employment?
23 A. During her employment and how City finances
24 were approved, is that your question?
25 Q. Correct. What was the procedure for approval

Page 19

Page 21

1 Hammer rebuffing any of your requests for documents or
2 to do something that you asked her to do and having her
3 direct you to the mayor instead?
4 A. No.
5 Q. Did you ever have any frustrations with Sharon
6 Hammer responding to any of your requests?
7 A. No.
8 Q. She was always compliant with your requests?
9 A. Yes, because all of my requests were worked
10 through the mayor or were in response to requests that
11 she would have. And they weren't requests, they were
12 just things that she was working on where she would ask
13 me for information or she would ask me to participate in
14 various projects and review some of her work or whatever
15 it was.
16 Q. Did you ever get frustrated with Sharon
17 Hammer's performance or lack of performance with her
18 performance of her job?
19 A. No.
20 Q. Did you ever have an occasion to observe Ms.
21 Hammer not performing what you believed to be a function
22 of her job?
23 A. I think there were times during certain
24 council meetings where the entire council was
25 frustrated, where we wouldn't receive information or

1 of financial expenses of the City while you sat as a
2 city council member during Ms. Hammer's employment?
3 A. It was a very haphazard process. Department
4 heads would first approve an expenditure, then it would
5 go, I believe, to the finance manager, then it would go
6 to the city administrator, then it would go to the
7 mayor, then it would go to a city council member for
8 review.
9 As far as when a city council member would
10 review it, it would be one council member reviewing
11 it -- one council member would have a three-month period
12 that they would review it and then it would rotate, is
13 my understanding.
14 That process was pretty lackadaisical.
15 Certain times council members weren't even advised that
16 there were things to review. Things would just show up
17 in your mailbox. If you happened to come in to check
18 your mail, you would see something and you were advised.
19 Many times the credit card statements weren't
20 provided. I know I had to request it numerous times and
21 sometimes they still wouldn't show up. If they would,
22 they would be months late, after the bill had been long
23 paid. I know that times when I would review it, things
24 would be missing. I would put Post-It notes on and ask
25 questions about why things were missing or what was this

Page 22

1 all about. Many times I would not get a response back.
2 Those types of things happened. The final approval, no
3 one ever really knew what happened to that.

4 We also disagree with some statements that
5 have been made by others on how the council actually
6 approved these. If you notice on council agendas, the
7 council actually just received and filed the financial
8 statements and reports and the bills paid report. We
9 didn't actually approve those. And the council would
10 also authorize a payment of bills for the preceding
11 month. So we were authorizing bills without even seeing
12 them.

13 All of this procedure is how the mayor and the
14 city administrator ran the City. Based on subsequent
15 audits, that procedure has all been changed.

16 Q. You referenced a couple different times that
17 there were instances that you could recall where there
18 wouldn't be supporting information for an expenditure
19 and you would have to request additional information,
20 sometimes you didn't even get additional information.

21 A. Correct.

22 Q. Would you approve those expenses?

23 A. No. At times I would only write -- I wouldn't
24 even write "approved," I would just write "reviewed"
25 when I signed it.

Page 23

1 Q. Would you also write "reviewed but not
2 approved" because certain information wasn't available?

3 A. I would leave the Post-It notes on there when
4 I would request information.

5 Q. What were the Post-It notes?

6 A. Where is the documentation for this or what is
7 this all about?

8 Q. Did you ever do any follow up on those
9 requests beyond the Post-It notes?

10 A. I would expect that they would come back to
11 me, but many times they didn't.

12 Q. And then that packet of information would be
13 presented to the council?

14 A. No. That packet never went to the council.

15 Q. What kind of expenditures are you talking
16 about where you never got your questions answered?

17 A. This was quite a while ago. There would be
18 various expenses. It's hard to pinpoint those.

19 Q. But you are saying they were not the type of
20 expenses that would go to the council?

21 A. No. The packet did not go to the council, the
22 yellow sheets in them, they wouldn't go to the council.

23 Q. What would go to the council?

24 A. Just a summary that would list XYZ
25 corporation, \$500.

Page 24

1 Q. So let's say you are reviewing the yellow
2 sheets and there is an invoice for XYZ corporation in
3 there, you put your sticky notes on there that says
4 where is this, give me this additional information, and
5 you write "reviewed" on it, and then you are done with
6 your job as city council, individual city council member
7 reviewing that invoice. Okay?

8 You then get the summary sheet at the city
9 council meeting along with the entire council and on
10 there is listed XYZ \$500. Did you do anything at that
11 time to say, I never got my answers to that invoice?

12 A. Sometimes I would ask questions at council
13 meetings.

14 Q. Can you think of any expenditure that council
15 did not receive and file because it was inappropriate?

16 A. Off the top of my head I cannot answer that
17 question because I don't know. I do know that after all
18 of this blew up Michelle Frostenson told me that --
19 because I was the one who generally asked the most
20 questions about the financials at council meetings --
21 told me that many times, or a number of times I had
22 asked questions and I had come very close to some of the
23 things that had come out in the audit. And when I did
24 come close to touching a nerve, the city administrator
25 and the mayor quickly changed the subject to move away

Page 25

1 from it.

2 Q. That, according to Michelle Frostenson,
3 transpired in a city council meeting?

4 A. Correct.

5 Q. So how would the mayor and the city
6 administrator direct you away from your inquiries?

7 A. I don't know. Apparently they changed the
8 subject, moved on. Mayor Willich was very quick at
9 moving things on when he thought things were,
10 quote-unquote, "dragging on."

11 Q. If you, as a city council member, thought
12 something about one of your questions was not being
13 answered and Mayor Willich said, Let's just move on,
14 would you have agreed to move on?

15 A. You don't have a choice when Mayor Willich is
16 running a meeting. He uses his gavel when he thinks
17 people are asking too many questions.

18 Q. You could have made your objection on the
19 record even if he used his gavel, right?

20 A. Sometimes it wasn't worth it with Mayor
21 Willich. As we, of course have learned now with the
22 results of all the audits that came out, we were
23 correct.

24 Q. You were correct about what?

25 A. Well, the audits show that there was all kinds

Page 26

1 of institutional problems going on within the city
2 administration and the management of the City.
3 Q. Did you suspect that at the time?
4 A. No.
5 Q. What are you saying, we are correct; correct
6 about what?
7 A. For going forward with the audits, the reason
8 for the audits.
9 Q. What was the reason for the audit?
10 A. The Patty Ball report.
11 MR. SWARTZ: Give me a second. I have another
12 binder I need to grab.
13 (Off the record.)
14 Q. (BY MR. SWARTZ) Mr. Ribí, as I understand it,
15 Michelle Frostenson came to you on -- she texted you on
16 November 10, 2011 and asked you to call her. Do you
17 recall that?
18 A. That's correct.
19 Q. Do you recall what she told you when you
20 returned her text message?
21 A. I did not return her text message.
22 Q. By phone, I presume you returned it by calling
23 her as she requested.
24 A. Yes. When I received her text message, I was
25 in a local emergency planning meeting. She texted me, I

Page 27

1 believe, around 11:00 in the morning. Ms. Hammer was
2 also in that same meeting, she was sitting right in
3 front of me, as a matter of fact, and we spoke about
4 some things that had come up in that meeting that
5 related to the City and just had a nice discussion.
6 I saw the text then at the end of the meeting,
7 and I left the meeting. And since I was headed towards
8 City Hall to go get my mail, I called Michelle and said,
9 What's up? And she said, I need to talk to you. I
10 said, Well, I'm headed toward City Hall, let's talk.
11 And she said, No, I don't want to talk to you at City
12 Hall. I said, Where do you want to talk? She said,
13 Some place private. I said, Okay. And I tried to think
14 of some place.
15 And on the way to the mail is a place over by
16 Wildflower Condominiums that is just kind of over this
17 little knoll, it's a little park area. So I said, Why
18 don't we meet there. She said, Fine. So that is where
19 we met.
20 Q. Was November 10 a weekend?
21 A. I think it was the day before Veterans Day, so
22 whatever day that was. It would have been a Thursday,
23 because the LEPC meets on Thursdays.
24 Q. So her text came to you on a Thursday?
25 A. Yes, at about 11:00 in the morning.

Page 28

1 Q. And she was in town or --
2 A. She must have been, because I met her probably
3 around noon when the meeting was over, the LEPC meeting
4 was over.
5 Q. When you met with Ms. Frostenson in the park,
6 what did you learn?
7 A. She told me that she had something that she
8 wanted to speak to the city council, and I asked her
9 what it was about. And she told me that she had gone to
10 Mayor Willich in October with some information and he
11 had not done anything about it. And so I said, Well,
12 what is it? And she started telling me.
13 And I said, Wait a minute here, this is all
14 news to me. Whatever it is that you want to tell me you
15 need to tell this to the whole council. And I said, If
16 the rest of the council wants to have an executive
17 session, that's what would be appropriate. And I said,
18 But I don't want to say anything to the other council
19 members unless this is serious. If this is just minor
20 stuff, don't waste our time.
21 She convinced me it was serious and she gave
22 me an overview. And I told her, I said, If the rest of
23 the council wants to have a meeting, you need to be
24 prepared with data and documentation. And then we left
25 it at that.

Page 29

1 Q. When she began to give you an overview, what
2 did she state to you?
3 A. She just gave me an overview of kind of what
4 she presented at the executive session the next day.
5 Q. Did she have any documents with her?
6 A. No.
7 Q. What do you recall that she told you while you
8 were meeting in the park?
9 A. She gave me an overview of the vacation
10 issues, the use of the car issue, the credit card issue,
11 the BLM issue, and then a couple of others I can't
12 remember off the top of my head. I didn't take any
13 notes, I was just listening.
14 Q. What was the vacation issue that she relayed
15 to you in the park?
16 A. The same one that was discussed at the city
17 council meeting on the 11th.
18 Q. What was that?
19 A. What was that?
20 Q. Yes.
21 A. The time off issue that she discussed in
22 detail at the council meeting.
23 Q. I'm just asking you what is that, what is the
24 vacation issue, the time off issue?
25 A. What is it?

Page 30

1 Q. Yes. Can you describe what she described to
2 you the vacation issue was?

3 A. I can't remember exactly what she said at that
4 particular meeting on the 10th, but it was related to
5 the vacation issue.

6 Q. Did it involve a particular employee?

7 A. Yes.

8 Q. What employee?

9 A. Sharon Hammer.

10 Q. Any other employees?

11 A. It may have involved other employees. I can't
12 remember specifically on that particular day.

13 Q. What was the credit card issue that she spoke
14 to you about on the 10th of November?

15 A. Same thing.

16 Q. What was that?

17 A. What do you mean "what was that"?

18 Q. What did she describe to you was the serious
19 issue with the credit card?

20 A. The unauthorized use of the credit card for
21 personal use.

22 Q. Who did she allege was utilizing the credit
23 card in that manner?

24 A. Sharon Hammer.

25 Q. Any other employees?

Page 31

1 A. She may have. I don't know. Again, it was an
2 overview and it was on that particular day, and I didn't
3 take any notes.

4 Q. Did she relay to you how much she believed
5 Sharon Hammer had spent without authorization?

6 A. I can't remember.

7 Q. Whether she gave you a figure or not?

8 A. I can't remember on that particular day.

9 Q. What was the BLM issue?

10 A. It had to do with something about modification
11 of time and adjustment of times of some employee in
12 order to gain additional money for the City or something
13 like that.

14 Q. Did she attribute whatever that was to Sharon
15 Hammer?

16 A. It's possible, yes.

17 Q. Are you guessing or do you remember
18 specifically?

19 A. I believe that's what was said.

20 Q. Did she have any allegations about any other
21 employee on the 10th other than Sharon Hammer?

22 A. It's possible, yes.

23 Q. Do you remember any?

24 A. I don't remember.

25 Q. What is it about what she said that led you to

Page 32

1 believe it was serious enough that you were going to not
2 waste the council's time and reach out to them and call
3 an executive session?

4 A. Based on what she told me it sounded very
5 serious. It sounded like something that, especially
6 since the mayor had not taken any action on it, the
7 council needed to hear this. I took it very serious.
8 This was our fiduciary duty to the taxpayers to deal
9 with this, to at least hear it.

10 Q. Why the urgency of calling the meeting the
11 next day, the 11th?

12 A. Because we had just learned about it. This is
13 not something you sit on. You take action. You hear
14 it, you take action, let's move on it.

15 Q. Even if it was a dollar alleged to have been
16 misspent?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: Could you repeat that question.

19 Q. (BY MR. SWARTZ) Did you have any idea of how
20 much Ms. Frostenson was alleging was at issue?

21 A. I don't know if she gave me specific dollar
22 amounts, but it appeared there was significant dollar
23 amounts involved.

24 Q. Appeared based upon what?

25 A. Based upon what she told me.

Page 33

1 Q. So she gave you some numbers of some sort.

2 A. Of some sort, yes. And it sounded like
3 significant taxpayer money involved.

4 Q. How long did your meeting on the 10th with
5 Michelle last?

6 A. I didn't keep track of time, but I'm guessing
7 it was 15 minutes to half an hour.

8 Q. When you told Michelle that she needed to have
9 data and documents to back up her allegations, did she
10 indicate that she had some?

11 A. I believe she told me that she could put
12 together that information.

13 Q. Was it your impression that it wasn't already
14 put together?

15 A. Well, I believe what she said was she could
16 put that together for the meeting.

17 Q. Did she indicate whether she already had
18 materials that supported her allegations?

19 A. I believe she gave me that impression, yes.

20 Q. What did you do following your 15 to 30 minute
21 meeting with Michelle in the park?

22 A. I then contacted Council -- let me think --
23 Council Member or Council President Briscoe, I can't
24 remember at that point. I think Council Member Briscoe
25 was council president at that point by phone and then

Page 34

1 Council Member Youngman by phone. I couldn't reach
2 Council Member Lamb, she apparently was out of town and
3 was not available.

4 Q. What did you state to Mayor Briscoe when you
5 contacted him?

6 A. I said to him that I had just been contacted
7 by Michelle Frostenson and that she had given me
8 information that was very important regarding a
9 personnel matter and that we needed to meet as soon as
10 possible. And realized that we had a 24 hour notice
11 provision, and I would also be contacting Council Member
12 Youngman and Council Member Lamb and seeing what we
13 could do to make arrangements to have a special
14 executive session.

15 I also indicated that it would probably be
16 best if we had council members call the special meeting
17 rather than asking Mayor Briscoe, since he obviously
18 could be possibly involved in this.

19 Q. Mayor Briscoe?

20 A. Excuse me. Mayor Willich, since he may be
21 possibly involved in this since he didn't want to do
22 anything about it.

23 Q. How do you know that Mayor Willich didn't want
24 to do anything about it?

25 A. Because, as I spoke to you earlier, I told you

Page 35

1 that she had approached him with this same information
2 in October and he had not done anything about it.

3 Q. Did you do anything to confirm that?

4 A. No. But that was something we were going to
5 bring up, and obviously I felt that we would bring it up
6 in the executive session.

7 Q. Was to ask Mayor Willich whether he did
8 anything in response to the allegations?

9 A. Correct.

10 Q. Did you elaborate on what the personnel matter
11 was that you referred to when you spoke to Mayor
12 Briscoe?

13 A. No.

14 Q. Did you ask?

15 A. No.

16 Q. Was it a personnel matter or was it a
17 financial issue?

18 A. It sounded like a personnel matter to me.

19 Q. Why did you characterize it as that?

20 A. Because it involved personnel.

21 Q. It involved personnel doing something they
22 should not have done?

23 A. That was the allegation that Michelle
24 Frostenson made.

25 Q. So it was more of a failure or a -- that's

Page 36

1 probably not quite the right way to phrase it.

2 I guess, bluntly, it was allegations that an
3 employee had stolen money from the City; is that fair?

4 MR. NAYLOR: Object to the form.

5 THE WITNESS: That is your interpretation.

6 Q. (BY MR. SWARTZ) Is that a fair interpretation,
7 is that the way you understood it as a fiduciary, that,
8 Oh, wow, we have somebody who is taking money from the
9 City and they are not authorized to do it?

10 A. No. It was my interpretation that there is
11 some allegations here, we need to hear what this is
12 about.

13 Q. And it involved an employee and it involved
14 misuse of funds and City equipment.

15 A. Potentially.

16 Q. Tell me about your phone call with
17 Mr. Youngman.

18 A. Same as with Mayor Briscoe -- or excuse me,
19 Council President Briscoe.

20 Q. When you reached out to Joan Lamb, did you
21 leave her a voicemail, did you send her an e-mail,
22 anything like that?

23 A. I couldn't reach her. I did not send her an
24 e-mail.

25 Q. You tried to call her?

Page 37

1 A. I believe I may have.

2 Q. Do you recall what happened when you might
3 have called her?

4 A. I'm not sure. I don't remember.

5 Q. Whether you got a voicemail or --

6 A. I don't remember.

7 Q. How did you learn she was out of town?

8 A. I believe when I arrived at City Hall later,
9 perhaps Kelly Ek or somebody at City Hall told me she
10 was out of town.

11 Q. Are you just guessing about that or do you
12 specifically remember?

13 A. Someone told me, I don't know who it was.

14 That was a day that City Hall was closed, but I know
15 Kelly Ek was there at City Hall that day to assist with
16 the noticing of the meeting.

17 Q. Were there any other employees present on --
18 are you talking about the 10th?

19 A. The 10th. Yes, I guess they were open that
20 day. Yeah, they were open. So I'm thinking that -- I'm
21 confused, because it was the next day that it was
22 closed. So she was there. Yes, there probably were
23 other employees there too.

24 Q. At any time during your term as a city council
25 member did you and Joan Lamb have a disagreement about

Page 38

1 her disclosure of information that was shared to her in
2 executive session?

3 A. Various members of the council and Mayor
4 Willich had issues with that, yes.

5 Q. I'm asking about you specifically.

6 A. Yes.

7 Q. Do you recall when that took place?

8 A. No.

9 Q. This disagreement that you had with Ms. Lamb,
10 as I understand it she shared information that was
11 supposed to remain confidential because it was in an
12 executive session and you believed that her disclosure
13 of that information was wrong; is that correct?

14 A. I do not remember the details of that.

15 Q. What do you remember about your disagreement
16 with Ms. Lamb regarding her disclosure of information
17 that was shared in an executive session?

18 A. I don't remember the details of that.

19 Q. What do you remember?

20 A. I don't remember anything about it.

21 Q. Just that it happened?

22 A. There was something that happened, and I
23 remember Mayor Willich, myself, Council Member Briscoe,
24 and someone else, whoever else was on the council at the
25 time, had issues with it.

Page 39

1 Q. Were they in favor of her disclosing
2 information from -- I'm asking about you actually. Were
3 you in favor of her sharing information?

4 A. I think there was some issues with that
5 because of that particular issue, whatever it was at
6 that time, whatever that particular issue that was
7 disclosed.

8 Q. Following her disclosure of information that
9 was shared in executive session, did the city council
10 undertake efforts to implement a policy that no
11 information shared within an executive session would be
12 shared publicly?

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: Could you repeat the question.

15 Q. (BY MR. SWARTZ) Following Ms. Lamb's
16 disclosure of information from an executive session, did
17 the city council implement a written policy that stated
18 no information from an executive session would be shared
19 publicly?

20 A. I don't know what the wording of -- there were
21 policies adopted, but I don't know what the wording of
22 those policies are. You would have to show that to me.

23 Q. Was the effect of the policy to make sure that
24 what happened with Joan Lamb wouldn't happen again?

25 A. I don't believe that was necessarily the

Page 40

1 wording of that policy. You would have to show it to
2 me.

3 Q. What do you recall the policy to be with
4 regard to information that is shared in an executive
5 session?

6 A. There are various rules and laws and
7 understandings about what can and can't be disclosed.
8 There are privilege, attorney-client privilege that
9 should never be disclosed. There are personnel matters
10 that shouldn't be disclosed.

11 There are other things that the attorney
12 general feels you can disclose. It varies. There are
13 times when there are legal matters that happen when you
14 need to disclose things.

15 Q. Do you believe that the policy the city
16 council adopted while you were sitting as a member
17 addresses all those various things?

18 MR. NAYLOR: Object to the form.

19 THE WITNESS: I haven't seen that policy in a
20 long time. I would have to look at it and see what the
21 exact wording is. I believe many of the things that
22 have been presented in some of these files have been
23 picked apart and cherry picked, with various portions
24 not necessarily placed in full.

25 Q. (BY MR. SWARTZ) Some of the information has

Page 41

1 been covered up and some of it has been revealed, is
2 that what you are saying.

3 MR. NAYLOR: Object to the form.

4 THE WITNESS: No. I'm saying certain parts
5 have been extracted and just placed in without the full
6 text placed.

7 Q. (BY MR. SWARTZ) Right. Some stuff has been
8 covered up so you can't see it.

9 A. I'm not saying that, no. I'm saying certain
10 sentences have been extracted out and used rather than
11 the entire text.

12 Q. How was the stuff that is not visible --

13 A. Sometimes you have to look at things in the
14 entire context.

15 Q. To fully understand them, is that what you are
16 saying?

17 A. Correct.

18 MR. NAYLOR: Can we take a quick break?

19 MR. SWARTZ: Sure.

20 (Recess taken.)

21 Q. (BY MR. SWARTZ) We are looking at tab 25, it
22 should be the November 11 meeting minutes.

23 Mr. Ribl, you are looking at some documents
24 that were produced marked as Bates No. Ribl 272 through
25 285. I'll ask you to take just a moment to look at

Page 42

1 those and see if you recognize that packet of material.
2 A. (Reviewing document.) Yes.
3 Q. How do you recognize that packet?
4 A. Those are my notes from the council meeting
5 and executive session on November 11, 2011, and also the
6 exhibits, at least the ones that I had that Michelle
7 Frostenson presented to the council. There may have
8 been more, but those were the ones that I had.
9 Q. As you are sitting here today and looking
10 through this, do you believe there were more or --
11 A. I can't recall. And I would also note that on
12 her exhibits there were highlights, some of these items
13 were highlighted in what she presented that aren't
14 highlighted here.
15 Q. Is that because they weren't copied in color?
16 A. They probably weren't copied in color.
17 Q. It looks like Ribí 272 is from the public
18 session, your notes from the public session; is that
19 correct?
20 A. That looks like -- correct.
21 Q. The second page, is that executive session or
22 is that --
23 A. That was my note prior to the executive
24 session of what I was going to say to the council why we
25 were there, the top part.

Page 43

1 Q. Anything from Ribí 273 that you think is
2 covered up?
3 A. No.
4 Q. Let's look at Ribí 274. Are those notes from
5 the executive session?
6 A. Those are my notes.
7 Q. From the executive session?
8 A. Correct.
9 Q. Why don't you go ahead and walk me through
10 your notes of what Ms. Frostenson shared with the
11 council on November 11, 2011. We can work our way down
12 the page here.
13 A. Okay.
14 Q. So it looks like the speaker is Michelle.
15 A. Yes.
16 Q. And it looks like she is referencing an
17 October 5th meeting with the mayor; is that correct?
18 A. Correct.
19 Q. And then it looks like she is going into a
20 number of her concerns that she is presenting to the
21 council. And the first item listed is vacation; is that
22 right?
23 A. Correct.
24 Q. What does that first line say?
25 A. Some reference to July 2008, no, one day

Page 44

1 sick -- one day sick claimed, apparently maybe in July
2 2008, no vacation. I don't know. I'm not sure.
3 Q. What is the last line under the first section
4 of vacation there?
5 A. "She is not recording her vacation hours
6 except for two big trips (Turkey and Bali)."
7 Q. The last line.
8 A. And asked for -- "people usually don't know
9 that she will be gone." It's apparently some statement
10 that Michelle made.
11 Q. Am I reading your notes correctly that
12 Michelle Frostenson went back to July of 2008 to look at
13 Sharon Hammer's pattern of reporting or not reporting
14 vacation?
15 A. You would have to ask Michelle that.
16 Q. You don't recall?
17 A. No.
18 Q. Do you recall what period of time Michelle
19 Frostenson's allegations covered?
20 A. I'd probably have to look at some of the
21 attachments, I believe. These are not detailed notes.
22 These are just -- sometimes when someone starts
23 speaking, they just start taking notes, and then when
24 they realize maybe that is not pertinent, they stop and
25 get into something else.

Page 45

1 Q. If it's pertinent in your mind, you would
2 write it down?
3 A. Sometimes I would; sometimes I wouldn't.
4 Q. Then she has a number 2, "use of City
5 vehicles." Do you see that there?
6 A. Yes.
7 Q. Was she alleging that Sharon Hammer was using
8 multiple vehicles improperly?
9 A. I don't know. I don't know why it says
10 "vehicles" plural.
11 Q. Third item says "gas card"; is that correct?
12 A. Correct.
13 Q. Number 4, "an iPad purchase"; is that correct?
14 A. Correct.
15 Q. And number 5, "iPhones for department heads"?
16 A. Correct.
17 Q. Is that "without upgrades"?
18 A. That's what it says.
19 Q. Number 6, "M. Hoffman, \$800 chair on his
20 credit card"; is that correct?
21 A. Correct.
22 Q. Was Michelle Frostenson suggesting that that
23 was Sharon Hammer's doing?
24 A. I think she is just outlining various things
25 here.

Page 46

1 Q. Did you have an understanding from the
2 November 11, 2011 meeting whether things she outlined
3 were in your opinion attributable to Sharon Hammer?
4 A. I believe some were and some weren't.
5 Q. Number 7, Ray Franco bonus issue; correct?
6 A. Yes.
7 Q. Number 8, that is the BLM issue?
8 A. Yes.
9 Q. She is alleging that Sharon Hammer changed
10 Michelle Frostenson's invoice to get more from the BLM?
11 A. That's what it says.
12 Q. Did Michelle Frostenson share with you ever
13 during the November 10 meeting or the November 11
14 meeting that she felt like her job was in jeopardy as a
15 result of the things she was bringing to your attention?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: That her job was in jeopardy?
18 Could you explain what that means?
19 Q. (BY MR. SWARTZ) Sure. Did she relay to you
20 in any fashion that she as the City treasurer felt like
21 her job could be in jeopardy because of the alleged
22 misuse of City funds and/or City property?
23 A. Not on November 10, but I believe at the
24 council meeting -- or at the executive session she may
25 have said something to the effect that there were some

Page 47

1 audit issues that she was concerned about.
2 Q. Do you recall anyone ever telling her, Don't
3 worry about your job, you are going to be protected?
4 A. I don't.
5 Q. Number 9, it's an issue related to a raise
6 given to Eric Adams. Do you see that there?
7 A. Yes.
8 Q. Did she also allege that Ms. Hammer was
9 believed to have an inappropriate relationship with Eric
10 Adams?
11 A. Not at this meeting.
12 Q. When did she allege that?
13 A. I think those allegations came up sometime
14 during the Patty Ball report.
15 Q. Do you know whether it was Michelle Frostenson
16 or someone else who was making those allegations?
17 A. I don't.
18 Q. Number 10, looks like an issue of overpayment
19 to Nick Carnes; is that correct?
20 A. I don't know if that's an overpayment issue
21 or -- it looks like a PERSI issue.
22 Q. Next item number 11, Mal Prior, does that also
23 look like a PERSI issue based on your notes?
24 A. It says "just below PERSI level."
25 Q. Does that suggest to you that he didn't

Page 48

1 qualify for PERSI but was getting it?
2 A. It had something to do with the number of
3 hours he was working or something like that.
4 Q. Was that attributed to Sharon Hammer?
5 A. I don't know.
6 Q. Number 12, Nick Carnes, looks like he was
7 alleged to have been intoxicated and somebody informed
8 Sharon Hammer. Do you see that there?
9 A. Yes.
10 Q. Can you recall what that was about?
11 A. Just what it says right there.
12 Q. Do you know who informed Sharon Hammer?
13 A. No.
14 Q. Number 13 says "inventory" -- you are going to
15 have to read the rest for me.
16 A. "Inventory - Tuesday e-mail from Sharon
17 Hammer, quote, 'known for a while things have walked
18 away from City Hall.'" I think this was one of the
19 issues that she may have raised regarding concerns for
20 the audit.
21 Q. How long did it take for Ms. Frostenson to
22 share the details of her allegations for these 13 items,
23 do you recall?
24 A. Well, you can go back to the time here.
25 Meeting was called to order at 2:00. It looks like

Page 49

1 Willich left the meeting for a while, for almost an
2 hour, then he returned, and we came out of executive
3 session at 4:45. So that is 2 hours and 45 minutes.
4 And then Michelle left the meeting at the end of the
5 executive session. And the whole meeting was recessed
6 at 4:50.
7 So that's pretty close to what I was saying
8 earlier in this deposition, just a few minutes after we
9 ended. So it was 2 hours and 45 minutes. So I
10 suspect -- I don't know, I would just be guessing. But
11 it looks like her discussion was quite a lot of that,
12 and then she had these documents and possibly others.
13 Q. Was Michelle Frostenson present for the
14 executive session attendees' discussion of what to do
15 about her allegations or was she excused before those
16 discussions took place?
17 A. She was present.
18 Q. Did she participate in the discussion about
19 what to do regarding the allegations?
20 A. I do not believe she was, no.
21 Q. If I understand your note correctly, the folks
22 who are present at this November 11, 2011 meeting were
23 yourself, Mayor Willich, Bob Youngman, Mayor Briscoe,
24 and Michelle Frostenson?
25 A. And Adam King.

Page 50

1 Q. He was there as well?
2 A. See right there (indicating).
3 Q. Very good. Thank you.
4 A. He was present at the request of the mayor.
5 Q. What were the discussions among all those
6 attending the executive session regarding what to do
7 about these allegations?
8 A. I can't speak for the others.
9 Q. What do you recall taking place; what were the
10 discussions?
11 A. If you look at the checkmarks on page 274, or
12 whatever you call this.
13 Q. Bates number.
14 A. Bates number. The discussion focused on those
15 items that were checkmarked, 1, 2, 3, and 8. The
16 vacation, the use of the City vehicles, the gas cards,
17 and the BLM issue.
18 Q. Okay.
19 A. And then towards the end Mayor Willich focused
20 in on two items you'll see, vacation and use of
21 vehicles, and then the discussion went towards what to
22 do. He proposed -- the council, I didn't write that
23 down, but the council had talked about a six-month
24 severance and Willich said three months, and we did talk
25 about releases. And you can see why he suggested three

Page 51

1 months.
2 Q. Because of what?
3 A. The threat of harassment. And they asked to
4 explain and Willich said no, he wouldn't explain. Adam
5 couldn't. Michelle, as you remember earlier I said,
6 Michelle said, I can. And that is when he shut her up.
7 And that was the end of that discussion.
8 And then the deal was to have Mayor Willich go
9 to Sharon Hammer, discuss this with her, make an offer,
10 see what happens, whatever, come back Monday and we
11 would recess until then.
12 Q. Do you have any recollection of whether Sharon
13 Hammer was on the City Hall premises on November 11,
14 2011?
15 A. No.
16 Q. Did Adam King explain why he would not explain
17 the threats of harassment?
18 A. No.
19 Q. Was it just Mayor Willich that was telling
20 Ms. Frostenson she couldn't discuss it or was it also
21 Adam King?
22 A. No, it was just Willich.
23 Q. Based on your notes did you have an
24 understanding that Adam was aware of the harassment
25 allegations?

Page 52

1 A. No.
2 Q. What do attribute your notes to Adam here
3 that, no --
4 A. Just because he said -- sorry.
5 Q. He was in agreement with Mayor Willich that
6 there shouldn't be further explanation or he was somehow
7 suggesting that no, I'm not going to discuss it?
8 A. I think we got the impression that he couldn't
9 explain it or just -- that's all.
10 Q. Was your takeaway from the November 11 meeting
11 that the allegations being made against Ms. Hammer were
12 allegations that were serious enough to warrant the
13 termination of her employment?
14 A. Based on what was presented and based on the
15 fact that Mayor Willich agreed that we should do it,
16 yes. He was very antsy to move forward and do it.
17 Q. Was there any discussion about his failure to
18 follow up on the October 5th meeting with Ms.
19 Frostenson?
20 A. Could you repeat that.
21 Q. Was there any discussion in this November 11th
22 meeting about Mayor Willich's failure to follow up on
23 Michelle Frostenson's meeting with him on October 5th?
24 A. Yeah, there was. You can see that was brought
25 up on page 274.

Page 53

1 Q. Do you recall what Mayor Willich stated in
2 response to that discussion?
3 A. I can't remember directly.
4 Q. Do you remember generally?
5 A. I can't remember generally.
6 Q. Did he deny not following up? Did he have
7 anything to say about it? You just don't recall at all.
8 A. I don't recall what he said.
9 Q. Do you recall why the city council was
10 suggesting a six-month severance?
11 A. I can't remember whether -- and I can't
12 remember whether or not Adam King was able to get a copy
13 of her employment agreement or not and whether that led
14 to that six-month discussion. I don't know whether it
15 was that meeting or not where he went out and tried to
16 get a copy of it. That could be and that's why we
17 looked at the six-month.
18 Q. Did somebody suggest that her employment
19 should just be terminated without a severance?
20 A. I don't believe that was discussed.
21 Q. Do you see any reference in here to offering a
22 six-month severance?
23 A. It's not written down.
24 Q. When did you learn about Sharon Hammer's
25 response to the offer of severance and termination of

Page 54

1 her employment?
2 A. I believe on Monday the 14th when we had the
3 next meeting.
4 Q. If you'll go to tab 28, that looks like your
5 notes from the November 14, 2011 meeting. Those are
6 Ribi 292 to 294. Do you recognize those?
7 A. Sort of, yes. The bulk of my notes are gone.
8 Q. Well, they have a white box over them that
9 says "Adam King and Brad Miller WP/AC," which I presume
10 refers to work product/attorney-client.
11 A. Okay.
12 Q. Do you need to see an unredacted version in
13 order to understand your notes?
14 A. I'll try my best without.
15 Q. Okay. Let's see how we do.
16 MR. NAYLOR: Well, I'll tell you that you are
17 not to testify as to anything that Brad Miller or Adam
18 King discussed with you about attorney-client privilege.
19 Q. (BY MR. SWARTZ) I'm not asking about that.
20 I'm just going to be asking about your notes. And if
21 you just can't answer questions about your notes without
22 seeing the unredacted stuff, you can just state that.
23 Fair?
24 A. Okay.
25 MR. NAYLOR: But again, your instruction is

Page 55

1 not to delve into what they've discussed, that's why
2 those notes are not contained in here.
3 THE WITNESS: I understand.
4 Q. (BY MR. SWARTZ) Were there any allegations --
5 A. Can I just make one -- there were things in
6 here though that had nothing to do with --
7 MR. NAYLOR: Come here. Let's take a break.
8 (Recess taken.)
9 Q. (BY MR. SWARTZ) Mr. Ribi, before we go to the
10 meeting of the 14th, a couple follow ups on the meeting
11 on the 11th. You stated that Mayor Willich left for
12 about an hour; is that right? Do you need to look at it
13 again?
14 A. Which tab is that?
15 Q. It's going to be tab 25.
16 A. Yes, my notes indicate he left at 2:55 and
17 then returned at 3:45, so 50 minutes.
18 Q. Do you know why he left?
19 A. No.
20 Q. Do you know where he went?
21 A. No.
22 Q. Did discussions continue while he was gone?
23 A. I would assume so, but I don't know for sure.
24 Q. During the meeting did anyone suggest that the
25 alleged misuse of City finances and/or equipment was

Page 56

1 criminal in nature?
2 A. I do not believe so at that meeting.
3 Q. Do you recall at what meeting that suggestion
4 was first made?
5 A. I believe it was made at the next meeting.
6 Q. The November 14th meeting?
7 A. I believe so.
8 Q. Do you recall who suggested that the conduct
9 that Ms. Hammer was alleged to have engaged in was
10 criminal in nature?
11 A. I believe that came from the attorney.
12 Q. Which attorney?
13 A. I believe that was Brad Miller.
14 Q. Let's go to tab 28, which are your notes from
15 the November 14, 2011 meeting; correct?
16 A. Yes, what is left of them.
17 Q. And Mr. Naylor is going to have an unredacted
18 copy available for you to take a look at on his iPad to
19 help you with any context issues you may have when we
20 are going through this stuff. Okay?
21 A. Thank you.
22 Q. What was the purpose of the November 14
23 meeting, do you recall?
24 A. I believe, and again, without having the
25 unredacted version, I believe that meeting was to hear

Page 57

1 the results of Mayor Willich and City Attorney King's
2 meeting with Sharon Hammer.
3 Q. What do you recall the result of that meeting
4 to be?
5 A. I believe they reported back that she rejected
6 the proposal on the severance.
7 Q. Brad Miller is an outside attorney, correct,
8 not a city attorney?
9 A. That's correct. He was recommended by Adam
10 King because he's a human resources attorney, I believe,
11 with Hawley Troxell.
12 Q. And no doubt the recommendation to have him be
13 part of the November 14, 2011 meeting must have taken
14 place before the November 14 meeting so that he could
15 attend; correct?
16 A. Could you repeat that.
17 Q. Sure. He's not a usual suspect for one of
18 these meetings, so somebody had to reach out to him
19 prior to the November 14 meeting to arrange for him to
20 join in.
21 A. Yes. Someone must have reached out to him.
22 Q. Do you know when that took place?
23 A. No.
24 Q. Do you know who reached out to him?
25 A. I would assume it was Adam King, but that is

Page 58

Page 60

1 an assumption on my part.
2 MR. NAYLOR: So don't assume.
3 THE WITNESS: So I'm not going to assume.
4 Okay.
5 MR. NAYLOR: Just tell him what you know and
6 tell him what you are guessing and he can decide what to
7 keep.
8 THE WITNESS: I don't know.
9 Q. (BY MR. SWARTZ) So he was attending the
10 meeting as a human resource specialist to comment on the
11 allegations; is that your understanding?
12 A. He was an attorney, but he had that
13 background.
14 Q. A human resource specialist?
15 A. A human resource employment attorney was my
16 understanding.
17 Q. Do you recall why it was recommended that he
18 join in on the November 14 meeting?
19 A. I don't have my notes, so I'm not sure if they
20 say something about that or not.
21 MR. SWARTZ: Mr. Naylor, do you happen to have
22 the unredacted versions yet?
23 MR. NAYLOR: No, he hasn't e-mailed those to
24 me yet.
25 Q. (BY MR. SWARTZ) So it looks like at this

1 A. This reminds me. This reminds me of what
2 happened in the meeting a little bit. I don't know what
3 I can say here based on what is redacted, but we
4 obviously had discussions about administrative leave in
5 this meeting. And Mayor Willich didn't want to put
6 Sharon Hammer on administrative leave. And I know there
7 was quite a bit of discussion about that and some big
8 concerns over it. And that really bothered me because I
9 felt it was very important, and that was the reason I
10 voted against that.
11 Q. Against the independent investigation?
12 A. Yes. I wanted him to get -- I wanted to get
13 her on administrative leave.
14 Q. What about the independent investigation
15 suggested to you that she would not be put on
16 administrative leave?
17 A. I don't understand your question.
18 Q. As I understand it the vote was whether to
19 conduct an independent investigation.
20 A. No, this was to engage an attorney to conduct
21 an independent investigation.
22 Q. Why did you vote against that?
23 A. I just explained to you my reason.
24 Q. So, Mr. Ribí, here is SV 2070 and 2071, which
25 is the minutes from the November 14 meeting.

Page 59

Page 61

1 meeting folks who were present was Mayor Willich, Adam
2 King, Bob Youngman, yourself, Mayor Briscoe, Joan Lamb
3 joined by phone along with Brad Miller; is that correct?
4 A. Yes. I do remember that Joan Lamb was only at
5 the meeting for a short period of time. She either hung
6 up or was disconnected or something, I can't remember.
7 Q. At the top of the page it says: "DB moved for
8 (b)." Do you see that?
9 A. Yes.
10 Q. Do you know what that refers to?
11 A. I would assume that would be the section under
12 Idaho Code for executive session, Section (b).
13 Q. The next page is completely blank. Third page
14 looks like you are out of executive session at noon,
15 having entered into at 10:10. There was a motion for an
16 independent investigation; is that right?
17 A. The motion to amend the agenda, to discuss
18 that. In other words, to add -- it must not have been
19 on the agenda, so it was a motion to amend the agenda.
20 And then there was a second motion to authorize the
21 mayor to engage an attorney to do an independent
22 investigation. Now I see, yeah, it was a 3 to 0 vote,
23 so obviously Joan Lamb was gone.
24 Q. Why did you vote against doing an independent
25 investigation?

1 A. Okay.
2 Q. If you'll look on 2070, the motion that you
3 voted against is listed as authorizing the mayor to
4 engage an attorney to conduct an independent
5 investigation.
6 A. Yeah, right here. No, that's to amend the
7 agenda.
8 Q. At the bottom.
9 A. Okay. I see it. Right above it it says:
10 "Council Member Nils Ribí indicated he was opposed to
11 starting an independent investigation until Mayor
12 Willich placed the city administrator on a leave of
13 absence."
14 Q. That was your statement in response to the
15 motion to amend the agenda to discuss hiring the
16 attorney. That is the motion that took place right
17 before the vote for authority to hire an independent
18 investigator; is that right?
19 A. No. That was my discussion prior to voting on
20 the motion.
21 Q. To engage an attorney.
22 A. Yes. You'll notice the motion above was
23 already declared carried.
24 Q. Why was that important to you to delay the
25 investigation until Ms. Hammer was placed on leave?

Page 62

1 A. Based on advice of council during that
2 meeting, and Mayor Willich was refusing to move. And I
3 believe once I see my notes, now that this is all
4 starting to come back to me, he was being very stubborn
5 about that.

6 Q. Why didn't he want to place her on
7 administrative leave?

8 A. I can't remember at this point the exact
9 reasons until I see, perhaps my notes say something.

10 MR. SWARTZ: Anything yet, Mr. Naylor?

11 MR. NAYLOR: No. They may be sending them all
12 at the same time. Do you want to come back to this?

13 MR. SWARTZ: Sure.

14 Q. (BY MR. SWARTZ) Mr. Ribí, can you read from
15 your notes right there where you are talking about
16 "Because Mayor was" something?

17 A. "Because Mayor wasn't going to put her on
18 administrative leave against advice of Brad."

19 Q. Do you recall why the idea of having an
20 independent investigation performed came about during
21 the discussions in the November 14, 2011 meeting?

22 A. There was threatened litigation. I know that
23 was one of the key issues.

24 Q. Who threatened litigation?

25 A. Mr. Donoval.

Page 63

1 Q. What was Mr. Donoval going to sue over?

2 A. I believe I sent those letters to the City.

3 Q. Do you recall what his threats were?

4 A. I can't remember the specific things that he
5 said. There was maybe one or two letters prior to that
6 meeting. I can't remember.

7 Q. There are two letters I'll show you. The
8 first is SH-TIMELINE 8 through 12 and the other is
9 SH-TIMELINE 13 through 14. Take a look at those, see if
10 those are the letters you are referring to.

11 A. (Reviewing document.) There is a November 12
12 and a November 12? Are these just duplicate?

13 MR. NAYLOR: They are different.

14 THE WITNESS: They are different?

15 MR. NAYLOR: Yes.

16 Q. (BY MR. SWARTZ) Both dated the same day but
17 different letters.

18 A. Somehow I don't remember two letters. Did I
19 receive two letters? I don't know. This one looks like
20 it's only to Willich and the other one is cc'd to all of
21 us. So I don't know whether or not I received this, the
22 second one.

23 Q. Okay. You are referring to SH-TIMELINE 13
24 through 14?

25 A. Yeah, I don't know whether I received that.

Page 64

1 Q. Do you recall receiving SH-TIMELINE 8
2 through 12?

3 A. I believe I may have received that one, yes.

4 Q. Is that the letter that you believe referenced
5 threats to lawsuits?

6 A. Yes, it says "in contemplation of litigation"
7 right on it.

8 Q. Do you recall reviewing this prior to the
9 November 14, 2011 meeting?

10 A. I believe we had received it by then, yes. It
11 says on the top here "Served 11/13/11," so that would
12 have been the day before the meeting.

13 Q. Do you recall any discussions about the
14 content of this letter during the November 14, 2011
15 meeting?

16 A. Without seeing my notes, I can't answer that
17 for sure.

18 MR. NAYLOR: What do you remember? That's
19 what he's asking.

20 Q. (BY MR. SWARTZ) I'm just asking whether you
21 recall any discussions about the content of the letter.

22 A. Not that I'm aware of.

23 Q. Go ahead and turn to the second page. First
24 section is regarding Ms. Hammer's use of flexible
25 personal time. Do you see that?

Page 65

1 A. Yes.

2 Q. And also authorized use of the City vehicle.
3 Do you see that?

4 A. Yes. Do you want me to read it?

5 Q. Yes, why don't you review it and we'll talk
6 about it.

7 A. (Reviewing document.) Okay.

8 Q. Did you understand from that paragraph that
9 Mr. Donoval is reminding the mayor that he approved
10 Ms. Hammer's use of flextime?

11 A. It appears that's what he is saying.

12 Q. Do you recall anyone in the November 14, 2011
13 meeting disagreeing with that occurring?

14 A. No.

15 Q. Did you feel like an investigation into her
16 flextime was still warranted?

17 A. Did I feel?

18 Q. Correct.

19 A. Yes.

20 Q. Why?

21 A. Based on the evidence that had been presented.

22 Q. What evidence suggested that she did not have
23 flextime approved by the mayor as stated in this letter?

24 A. Mayor Willich had not indicated that he had
25 given her any approval.

Page 66

Page 68

1 Q. Did he state that in the November 14 meeting?

2 A. He never once disagreed with -- he never once
3 said that he had given her approval to do that at the
4 November 11th, the November 14th, or the November 17th
5 meeting. It wasn't until the December 2nd meeting when
6 two council members questioned him about why he hadn't
7 said anything about that.

8 Q. Was that in response to Mayor Willich stating,
9 All of this was approved, I don't know why we are
10 investigating it?

11 A. I don't know what he said.

12 Q. But at the December 2nd meeting two council
13 members said, Mayor, why didn't you ever tell us that
14 you had approved the flextime and had approved the
15 vehicle use?

16 A. Why did you never bring it up? Why -- yeah,
17 they questioned him of why, Why did you -- yeah.

18 Q. Who were the two council members?

19 A. Briscoe and Youngman.

20 Q. What did Mayor Willich state in response to
21 them questioning about why he never stated that the
22 stuff was authorized?

23 A. I can't remember his exact response. I would
24 have to look at my notes. If there is anything in
25 there, I don't know.

Page 67

1 Q. It looks like there under tab 26 in the black
2 binder.

3 A. That doesn't help me much.

4 Q. We are looking at Ribl 286 through 288;
5 correct?

6 A. Yes.

7 Q. Do you see anything in those three pages that
8 refer to Mr. Willich being asked why he didn't
9 previously announce to everybody that the issues were
10 nonissues because they were actually approved?

11 A. I do not. Those are in the minutes or my
12 notes that have been redacted from that meeting. But I
13 do remember that at that meeting is when he was asked
14 why he never bothered to say anything to the council
15 about giving approval for all of these things; credit
16 cards, vehicles, flextime, all that stuff.

17 Q. So once it was learned by the council that the
18 allegations being made against Sharon Hammer for
19 unauthorized use of finances and the vehicle were
20 actually authorized, why did the council continue on
21 with investigating matters?

22 A. I don't know what -- I can't speak for the
23 rest of the council.

24 Q. What was your understanding of why it was
25 determined, at least as of December 2nd, that what Ms.

1 Hammer was alleged to have done was actually okayed by
2 the mayor, why did the process continue, if you recall?

3 A. The process had already begun, and it was
4 brought to our attention that the policy was very strict
5 on that, and it obviously was necessary to continue.

6 Q. The policy on what was very strict?

7 A. On the use of vehicles for personal use. It
8 was also brought to our attention that the use of credit
9 cards, government credit cards for personal use was
10 illegal under State code.

11 Q. At that point Mayor Willich is telling the
12 council her use of the credit card, her use of the
13 vehicle was something I approved. And it didn't seem to
14 be contested that those things occurred, at least based
15 upon Mayor Willich's comments; right?

16 MR. NAYLOR: Object to the form.

17 THE WITNESS: Would you repeat your question.

18 Q. (BY MR. SWARTZ) Sure. Did you have an
19 understanding that Mayor Willich wasn't contesting that
20 Ms. Hammer had used the vehicle or had used the credit
21 card? He was saying it was authorized by me. Is that
22 your understanding?

23 A. Eventually, later he eventually said that,
24 yes.

25 Q. At least by the December 2nd meeting.

Page 69

1 A. After he was questioned by the council, yes.

2 Q. I mean at that point you know that it's not
3 being contested that these things occurred. What is
4 there to further investigate at that point?

5 A. That doesn't necessarily mean it was proper.

6 Q. Right. No one is contesting that. The city
7 council says, Well, maybe you can prove it. But why
8 continue on with the investigation at that point? It's
9 not being contested. It's being admitted by the mayor,
10 these things did happen, and he may be wrong in his
11 authority to allow Sharon to do them. But at that point
12 why continue on with the investigation? It's being
13 confirmed and not contested that these things took
14 place.

15 A. They still may be improper.

16 Q. Nobody was suggesting they weren't improper.
17 If Mayor Willich was saying, Yes, these things did
18 happen, and the council is saying, Well, they violate
19 State code, they violated the policy, what else was
20 there to investigate?

21 A. I don't understand your question.

22 Q. It seems to me that when the council became
23 aware of Mayor Willich saying, Yes, these things did
24 happen and I authorized them, the council says, Why
25 didn't you tell us this before, it would have been

Page 70

1 information that would have been nice to know, we
2 wouldn't have gone through this investigation process.
3 When the cat is out of the bag, what else was there left
4 to investigate?
5 A. It still might have been investigated
6 regardless.
7 Q. What was there to learn --
8 A. The use of the government credit card for
9 personal use we were told was illegal, no matter whether
10 Wayne Willich said it was okay or not.
11 Q. At the December 2nd meeting was someone
12 contesting that the credit card was not used for
13 personal expenses?
14 A. Those were all being handled by the
15 investigator. We received Michelle Frostenson's
16 information. That was turned over to the investigator,
17 the investigator had that in her hands. The council was
18 not involved in this investigation. We were simply
19 standing back. That was being handled by the attorneys
20 doing the investigation.
21 Q. So December 2nd nothing is being contested as
22 to the use of the credit cards and the vehicles. You
23 have got a fiduciary duty to spend the City's money
24 wisely; right?
25 A. Correct.

Page 71

1 Q. At that point aren't you thinking, Why are we
2 still paying Patty Ball? The cat is now out of the bag,
3 everything is on the table, the mayor is saying he
4 authorized this stuff. Why keep throwing money at Patty
5 Ball?
6 A. That is our fiduciary duty to find out what
7 happened, to get that information.
8 Q. Didn't he tell the city council at the
9 December 2nd meeting that the things did happen and he
10 authorized them?
11 A. I think I've answered your question. Criminy,
12 how many times do I have to tell you?
13 Q. Why throw money at Patty Ball to conduct an
14 investigation on whether something did or did not occur
15 when the mayor is telling you it did occur?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: What is your real question? I
18 really --
19 Q. (BY MR. SWARTZ) That is my question: Why
20 spend money on Patty Ball to investigate something that
21 the mayor is telling the council, that at least by
22 December 2nd, Yep, I authorized her to use the vehicle,
23 yep, I authorized her to use the credit card?
24 A. I answered your question.
25 Q. What did she need to find out?

Page 72

1 A. We were advised by legal counsels that there
2 were allegations that had perhaps involved criminal
3 activity, i.e., the use of a government credit card for
4 personal use. That was one of them for sure.
5 Q. Do you recall --
6 A. Then there were additional things that came
7 forward, when other issues regarding the fire department
8 came, and those were added to this.
9 Q. Did those relate to Sharon Hammer?
10 A. I think they may have indirectly. I don't
11 know.
12 Q. Do you recall Mayor Briscoe's testimony
13 yesterday that the parameters of the Patty Ball
14 bilateral interview and her investigation included her
15 insistence that if she uncovered potential criminal
16 conduct, she was going to stop the investigation and let
17 an independent agency take it over?
18 A. My understanding of the Patty Ball
19 investigation was she was to investigate what she was
20 asked to investigate, and if she found on any one of
21 these particular issues what she perceived as criminal
22 activity or potential criminal activity, she would stop
23 investigating that part. And that's I believe what she
24 did.
25 Q. You just testified that as of December 2nd

Page 73

1 that there were allegations of criminal conduct that
2 were on the table.
3 A. Allegations, correct.
4 Q. Why didn't her investigation stop at that
5 point?
6 MR. NAYLOR: As to?
7 THE WITNESS: As to what?
8 Q. (BY MR. SWARTZ) As to those criminal
9 allegations involving Sharon Hammer.
10 A. There were allegations on November 11th, sir.
11 Q. Of criminal conduct?
12 A. Well, Michelle Frostenson laid out
13 allegations.
14 Q. Of criminal conduct?
15 A. Patty Ball was to investigate until she
16 determined whether there was potential criminal.
17 Q. And that was present as of December 2nd?
18 A. No. It wasn't done until Patty Ball finished
19 her work.
20 Q. I must have misunderstood your testimony.
21 A. Then I'm misunderstanding your question.
22 Q. No. I want to make sure I understand your
23 testimony. I thought you said as of December 2nd when
24 everything was out on the table and the Mayor said, Yes
25 this was all authorized, that one of the reasons why you

Page 74

1 kept going with the investigation was that there were
2 allegations of criminal misconduct.
3 A. No, no.
4 MR. SWARTZ: Kirt, do you have that unredacted
5 version yet?
6 MR. NAYLOR: No. Do you want to take a lunch?
7 MR. SWARTZ: Yes.
8 MR. NAYLOR: If you want to, let's just break
9 for lunch.
10 MR. SWARTZ: Yes, because I think Mr. Ribí is
11 really hamstrung without seeing his full notes.
12 Let's go off the record.
13 MR. NAYLOR: Yes.
14 (Luncheon recess taken.)
15 Q. (BY MR. SWARTZ) Mr. Ribí, we are coming back
16 from our lunch break. I understand that you have had an
17 opportunity to review the unredacted notes from the
18 various executive sessions; is that correct?
19 A. Yes.
20 Q. Based upon what you have reviewed, is there
21 anything that you need to add to your testimony from
22 this morning?
23 A. No.
24 Q. Is there anything that you need to correct or
25 clarify?

Page 75

1 A. I don't believe so.
2 Q. Outside of the executive session questions
3 that we've been going through this morning, is there any
4 other testimony that you need to correct, clarify or add
5 to?
6 A. The only thing I would say, just before we
7 left for lunch, is that you were asking the question
8 about why it was necessary to continue the Patty Ball
9 report. In reviewing what I did, I pointed out there
10 was a fire department investigation that was added, and
11 it was ongoing. There was also the investigation into
12 Sharon Hammer's allegations about me, and that was
13 ongoing too, and that needed to continue to be done.
14 Q. Those allegations are redacted -- the
15 information about allegations against you are part of
16 what is redacted in these documents?
17 A. There were attorney-client discussions
18 regarding that.
19 Q. You participated in discussions about Sharon
20 Hammer's allegations against you in an executive
21 session?
22 A. Not me.
23 Q. But they are in your notes?
24 A. Just the fact that there were discussions
25 about that issue.

Page 76

1 Q. Did it ever come up in any of the executive
2 sessions that perhaps you should excuse yourself from
3 discussing any of the allegations being made against
4 Sharon Hammer because of her allegations against you?
5 A. That was not discussed.
6 Q. Did it ever come up that perhaps you might
7 have a conflict because you were suing Sharon Hammer's
8 attorney?
9 A. That was not discussed.
10 Q. Were you seeking money in your lawsuit against
11 James Donoval?
12 A. Possibly.
13 Q. Would engaging in discussions with Sharon
14 Hammer and/or her attorney in executive session, in
15 light of your lawsuit against James Donoval in your mind
16 be a conflict of interest?
17 A. No.
18 Q. Why is that?
19 A. They were unrelated.
20 Q. What was unrelated?
21 A. My lawsuit and what was discussed there was
22 unrelated.
23 Q. You suing Sharon Hammer's attorney for making
24 comments about you in a letter he wrote to the mayor was
25 unrelated to Sharon Hammer?

Page 77

1 A. Correct.
2 Q. And the letter he wrote to the mayor was
3 alerting the mayor to the instances of harassment that
4 you engaged in against Ms. Hammer; correct?
5 MR. NAYLOR: Object to the form.
6 Q. (BY MR. SWARTZ) You can answer.
7 A. My lawsuit was unrelated to this.
8 Q. It arose out of a letter that James Donoval
9 wrote to the mayor where he said based upon your conduct
10 towards Ms. Hammer he believed you to be a dangerous
11 person; right?
12 MR. NAYLOR: Object to the form.
13 THE WITNESS: The issues in my lawsuit were
14 unrelated to this.
15 Q. (BY MR. SWARTZ) It didn't arise out of a
16 letter that James Donoval wrote to the mayor claiming
17 that you were a danger to Sharon Hammer and possibly to
18 others?
19 MR. NAYLOR: Object to the form; assumes facts
20 not in evidence.
21 THE WITNESS: What is your question?
22 Q. (BY MR. SWARTZ) Your lawsuit did not arise
23 out of that letter?
24 MR. NAYLOR: Same objection.
25 THE WITNESS: It arose out of statements James

Page 78

1 Donoval made about me personally.
2 Q. (BY MR. SWARTZ) What statements?
3 A. They are in my lawsuit.
4 Q. Didn't they arise out of a letter where he was
5 telling the mayor that you were a threat to Sharon
6 Hammer?
7 MR. NAYLOR: Same objection.
8 Q. (BY MR. SWARTZ) It's the same letter where he
9 suggested that you had a mental illness. Do you recall
10 that letter?
11 MR. NAYLOR: Same objection.
12 THE WITNESS: Yes, I do recall that letter.
13 Q. (BY MR. SWARTZ) And isn't that the letter
14 that gave rise to your lawsuit against Sharon Hammer's
15 attorney?
16 A. Part of it.
17 Q. Let's pick up where we left off on the
18 November 12 letter from James Donoval to the mayor
19 cc'ing all the city council members. I believe we left
20 off on Bates page 9. The second section on that page
21 states that "Mr. Ribí is seeking retribution for Ms.
22 Hammer's reporting of his own abusive behavior and
23 harassment." Do you see that?
24 A. I see that statement.
25 Q. Knowing that that allegation was being made

Page 79

1 before the November 14, 2011 meeting, did you do
2 anything to recuse yourself from the discussions about
3 how to proceed against Ms. Hammer?
4 A. No.
5 Q. Is this November 12, 2011 letter the letter
6 where Mr. Donoval refers to your history of mental and
7 emotional illness? If you'll look down on that last
8 paragraph toward the end.
9 A. It's where he alleges mental and emotional
10 illness. It's not true.
11 Q. And that's what gave rise to your lawsuit
12 against Mr. Donoval; correct?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: I can't say that for sure that
15 that was all of it.
16 Q. (BY MR. SWARTZ) Doesn't your lawsuit have to
17 do with Mr. Donoval making, your allegations, making
18 untrue statements about your history of counseling and
19 treatment for psychological illnesses?
20 A. My lawsuit states exactly what it states,
21 yeah.
22 Q. Is that a fair summary of it?
23 MR. NAYLOR: Object to the form.
24 THE WITNESS: Not necessarily. The lawsuit
25 says what it says. I haven't looked at what it exactly

Page 80

1 says. That was over two and a half years ago.
2 Q. (BY MR. SWARTZ) Sure. Mr. Donoval made these
3 false statements about you and you sued him because of
4 them; right?
5 A. And other reasons.
6 Q. Included in the false statements that you
7 believe he said would be this line in here that you have
8 a history of counseling and treatment for various forms
9 of emotional, psychological, physiological illnesses.
10 A. There were other letters involved in that.
11 Q. Of course. This would be one of the false
12 statements though; correct?
13 A. I can't say this is the specific one that was
14 used or not. I don't know.
15 Q. When you received this November 12, 2011
16 letter, you saw that phrase in there and you believed it
17 to be false; correct?
18 A. Of course, I know it to be incorrect.
19 Q. How about the City's payment of any sessions
20 that you attended for anger management or mediation or
21 arbitration with another city council member and/or
22 employee?
23 MR. NAYLOR: Object to the form.
24 Q. (BY MR. SWARTZ) Did that take place?
25 A. No.

Page 81

1 Q. You didn't go to any type of session with
2 Virginia Egger?
3 A. No.
4 Q. Or Joan Lamb?
5 A. No.
6 Q. Never did any conflict management or
7 resolution with any employee or city council member?
8 A. We had city council sessions with Ketchum City
9 Council, yes, on conflict resolution.
10 Q. But you are not aware of any session where you
11 and another employee or city council member went for
12 assistance in working out your differences?
13 A. No.
14 Q. Did it upset you that Mr. Donoval was making
15 this untrue statement about you that you have identified
16 in SH-TIMELINE 9?
17 MR. NAYLOR: Object to the form.
18 THE WITNESS: What do you mean by "upset"?
19 Q. (BY MR. SWARTZ) Did it make you upset?
20 MR. NAYLOR: Same objection.
21 THE WITNESS: I knew this to be untrue.
22 Q. (BY MR. SWARTZ) He sent this to all of your
23 fellow city council members and the mayor; right?
24 A. And to citizens.
25 Q. Did that upset you?

Page 82

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: What do you mean by "upset"?
3 Q. (BY MR. SWARTZ) Was it okay with you that he
4 did that?
5 A. It was untrue. It certainly seemed
6 inappropriate.
7 Q. How did you feel about what he did?
8 MR. NAYLOR: Object to the form.
9 THE WITNESS: I've answered you.
10 Q. (BY MR. SWARTZ) This is the first time I
11 asked that question. How did you feel about what Mr.
12 Donoval did?
13 A. I felt it was inappropriate.
14 Q. Anything else?
15 A. No.
16 Q. Is that a "no"?
17 A. No, nothing else.
18 Q. Did you do anything in response to Mr. Donoval
19 making that untrue statement about you in the November
20 12, 2011 letter?
21 A. What do you mean by do something?
22 Q. Did you do anything in response to these
23 statements Mr. Donoval made in his November 12, 2011
24 letter?
25 MR. NAYLOR: Object to the form.

Page 83

1 THE WITNESS: Did I do anything?
2 Q. (BY MR. SWARTZ) Did you take any action to
3 alert people that they were untrue? Did you call Mr.
4 Donoval? Did you call a lawyer? Or it was just, Ah,
5 it's no big deal?
6 A. No. It would be inappropriate for me to call
7 Mr. Donoval; he was representing a client.
8 Q. You are not an attorney; right?
9 A. That's correct. I understand how those
10 relations work.
11 Q. You were cc'd on this letter; correct?
12 A. Yes.
13 Q. Did you do anything in response to these false
14 statements about you?
15 MR. NAYLOR: Object to the form.
16 THE WITNESS: On November 12 when I received
17 it?
18 Q. (BY MR. SWARTZ) After November 12.
19 A. Up until when?
20 Q. At any time.
21 A. I still don't understand. It may have been
22 discussed. I discussed it with my personal attorney.
23 Q. Anything else?
24 A. It was obviously mentioned in -- this one may
25 have been mentioned in the lawsuit or attached to it.

Page 84

1 Q. The lawsuit against Mr. Donoval?
2 A. Yes.
3 Q. Anything else?
4 A. Not that I'm aware of.
5 Q. Do you recall when you contacted your personal
6 attorney, how long after you read this November 12
7 letter?
8 A. I don't remember.
9 Q. Did you discuss these false statements with
10 your city council members at the November 14, 2011
11 meeting?
12 A. I don't remember.
13 Q. Turning over to the next page, Bates 10, Mr.
14 Donoval goes on and makes additional statements about
15 you. It's that first full paragraph. He states you
16 have a long history of mental and emotional illness, he
17 is verbally abusive and is otherwise unstable, is most
18 likely emotionally incompetent to assume the public
19 position that he now possesses. Do you see that there?
20 A. I see his statement.
21 Q. Did you believe any of that statement to be
22 true?
23 A. No.
24 Q. Did you do anything in response to Mr. Donoval
25 having made that statement?

Page 85

1 A. My answer would be the same as I gave you
2 before.
3 Q. Contacting your attorney and this letter may
4 have been attached to your lawsuit against Mr. Donoval?
5 A. The same answer I gave before.
6 Q. Is that what I just recited back to you?
7 A. No. What you recited to me wasn't the same
8 answer I gave before. You gave your version of it.
9 Q. Can you correct my version if it's inaccurate?
10 A. I'd rather have the court reporter read back
11 what I said before.
12 MR. SWARTZ: Let's do that then, if you don't
13 mind.
14 (Record read back.)
15 THE WITNESS: That would be my same answer
16 here, yes.
17 Q. (BY MR. SWARTZ) Thank you.
18 Same page, moving down to the next section,
19 Mr. Donoval is alerting the mayor and the city council
20 to the request to have Adam King barred from further
21 involvement in matters related to Ms. Hammer. Do you
22 see that?
23 A. That first sentence?
24 Q. Yes.
25 A. Yes, I see it.

Page 86

1 Q. Was there any discussion at the November 14,
2 2011 meeting about Mr. King being barred from any
3 further discussions related to Ms. Hammer?
4 A. Not that I recall.
5 Q. Were there any discussions at any executive
6 session about Mr. King needing to avoid discussion about
7 Ms. Hammer?
8 A. I recall Mayor Willich at some point, and I'm
9 not sure exactly which meeting it was, making some
10 complaints about Adam King being involved. But I don't
11 know when that was.
12 Q. Was that at the time he was being sued?
13 A. No, I don't think it had anything involved
14 with him being sued.
15 Q. Do you recall how Mayor Willich's discussion
16 of Adam King continuing to be involved played out?
17 MR. NAYLOR: Object to the form.
18 THE WITNESS: Could you repeat that question.
19 Q. (BY MR. SWARTZ) Sure. Do you recall what the
20 resolution of Mayor Willich's raising that concern was?
21 A. I don't believe there was any resolution to
22 that. However, the council and Adam King agreed that it
23 would be important to bring in another attorney who had
24 employment and human relation -- HR experience.
25 Q. Do you think that is why Brad Miller was

Page 87

1 brought in?
2 A. I believe that is why.
3 Q. And the November 14, 2011 meeting was the
4 first meeting he attended; is that correct?
5 A. Correct.
6 Q. Who authorized the issuance of payment to Brad
7 Miller?
8 A. I don't know.
9 Q. Isn't that a payment like the payment to Patty
10 Ball or a contract like the contract with Patty Ball
11 that would have had to have been approved by the city
12 council?
13 A. Not necessarily.
14 Q. It could have been within Mayor Willich's
15 authority to enter into a new contract with a new
16 attorney?
17 A. Yes, that could have been within the
18 administrative legal fees line item.
19 Q. Why would doing something like that be
20 different than entering into a contract with an
21 independent investigator who happened to be an attorney?
22 MR. NAYLOR: Object to the form.
23 THE WITNESS: That was a separate contract for
24 a specific service.
25 Q. (BY MR. SWARTZ) You think there was already a

Page 88

1 contract in place with Mr. Miller?
2 A. Yes. My understanding was his was simply for
3 just legal services. The Patty Ball investigation was a
4 separate, something entirely separate.
5 Q. It wasn't for legal services?
6 A. It was for an independent investigation.
7 Q. I'm going to have you turn over to the next
8 page, Bates 11. Do you see where at the top of the page
9 Mr. Donoval is requesting that Ms. Hammer be fully
10 apprised in writing of the charges being assessed
11 against her, disclosure of what supports those charges,
12 and a formal hearing?
13 A. I see where that is written.
14 Q. Was there any discussion at the 11/14/2011
15 meeting about her request in that regard?
16 A. Not that I'm aware of.
17 Q. Did it occur to you that perhaps she should be
18 given the opportunity to know the allegations being made
19 against her and give her an opportunity to respond?
20 A. That was in my opinion up to the attorneys to
21 determine that.
22 Q. Do you recall anyone ever raising the issue
23 and saying, Why don't we just go ask her about these
24 allegations?
25 A. That was what Mayor Willich and Adam King were

Page 89

1 going to do at the close of the meeting on November 11.
2 Q. They were going to detail the allegations?
3 A. They were going to let her know what was going
4 on, yeah.
5 Q. What the allegations were?
6 A. Correct.
7 Q. And get her response to them?
8 A. Yes.
9 Q. Were they going to take any documents to show
10 her?
11 A. I don't know what they were going to take.
12 Q. Do you know what Ms. Hammer's response to the
13 allegations were?
14 A. Those were reported to the council on the
15 14th.
16 Q. What was her response?
17 A. I believe she denied them.
18 Q. Do you recall any other details about her
19 response?
20 A. No.
21 Q. Do you also see, second-to-the-last paragraph
22 on that same page, where Mr. Donoval is advising the
23 council and the mayor that if Ms. Hammer is placed on
24 leave the Idaho Mountain Express will publish that
25 information?

Page 90

Page 92

1 A. I see where he says that.

2 Q. And he also raises concerns about her
3 reputation being blemished as a result of her leave
4 being publicized?

5 A. I see where he says that.

6 Q. Was there any discussion on the 14th regarding
7 any action that the council or mayor might take in order
8 to protect Ms. Hammer's reputation?

9 A. I don't believe that was an issue on the 14th.

10 Q. Was it ever an issue as you are aware of it?
11 Was there any discussion of taking any precaution not to
12 take action in the public record that would somehow
13 affect Ms. Hammer's reputation?

14 A. I believe there were discussions about that on
15 the 11th, and that is why the severance was offered as a
16 possibility. I believe that was discussed January 19th
17 of 2012 when the mayor's decision was made to end the
18 contract without cause. I think those were the
19 occasions.

20 Q. Was the concern on the 11th that if the
21 allegations against Sharon Hammer were made public that
22 her reputation could be tarnished?

23 A. No. I believe the discussion was if there was
24 merit to the allegations and she took the severance, it
25 would be over with and nothing would be made public.

1 investigation was going to be held, it wouldn't be
2 advisable for the council to get involved in that.

3 Q. To hear her side of the story?

4 A. Yes.

5 Q. That was discussed at the November 14, 2011
6 meeting?

7 A. It may have been.

8 Q. When you refer to the phrase "the type of
9 allegations," what are you referring to?

10 A. Potentially criminal allegations.

11 Q. The next meeting I believe was on the 17th of
12 November. Is that your recollection?

13 A. After which one?

14 Q. The 14th.

15 A. Yes, I believe that is true.

16 Q. I think I've seen notes from the 17th. Do you
17 recall whether you --

18 A. I did have one or two pages.

19 Q. Okay. Let's see if we can find those. It's
20 under tab 27.

21 A. That's in the black book.

22 Q. Yeah.

23 A. (Reviewing document.)

24 Q. So you've identified then Ribi 289 through
25 Ribi 291 as your notes from the November 17, 2011

Page 91

Page 93

1 Q. And then on the 19th what was the discussion,
2 January 19th, the second meeting you referenced, what
3 was the discussion about trying to protect Ms. Hammer's
4 reputation?

5 A. I believe there was advice to the effect that
6 the without cause allowed the City not to have to
7 disclose the various allegations.

8 Q. Bates page 12, at the top of the page Mr.
9 Donoval is requesting an opportunity to meet with the
10 city council and have an opportunity to address the
11 allegations being made against Ms. Hammer. Do you see
12 that there?

13 A. I see where he wrote that, yes.

14 Q. Was there any discussion about providing her
15 the opportunity to do so?

16 A. I don't recall a discussion about that.

17 Q. Do you recall your feeling about her request
18 to present a response to the allegations being made
19 against her in an executive session?

20 A. I believe we were advised that because of the
21 allegations it wouldn't be advisable for us to be
22 involved in that.

23 Q. Hearing her side of the story?

24 A. Because of the type of allegations that were
25 involved it wouldn't be -- and an independent

1 executive session?

2 A. Yes.

3 Q. It looks like the top entry there is that you
4 were bringing Joan up to speed by walking her through
5 your notes of Michelle's counts?

6 A. Yes.

7 Q. Did anyone else assist Joan Lamb in getting up
8 to speed on Michelle's allegations?

9 A. I believe other council members assisted, yes.

10 Q. Do you recall who?

11 A. No, but they filled in areas that I did not
12 cover or added to.

13 Q. Moving on down the page there is a reference
14 to a police officer overhearing something from the
15 meeting. I can't quite read what is underlined in that
16 sentence there. Can you read that for me?

17 A. "Her workstation."

18 Q. "From her workstation." So you are stating
19 there was a discussion in that meeting about a police
20 officer overhearing something that occurred in executive
21 session from her workstation?

22 A. The mayor said something to the effect, the
23 police officer, quote-unquote, "overheard the meeting
24 from her workstation." That is what the mayor said.

25 Q. Do you know what was on the -- there is a

Page 94

1 reference to a tape. Do you know what was on the tape?
2 A. Yes.
3 Q. What was on the tape?
4 A. It was a recording of a conversation between
5 Sharon Hammer and a police officer discussing what was
6 said in the executive session.
7 Q. The police officer was reporting to Sharon
8 Hammer what was said in the executive session?
9 A. Yes, and Sharon Hammer was asking her for
10 additional information.
11 Q. What was the information that the police
12 officer overheard?
13 A. What was said in executive session.
14 Q. What was that?
15 A. I don't recall. I haven't listened to that
16 tape since probably November 11.
17 Q. What is over in the parentheses on the far
18 right-hand side in the middle of the page, "After"
19 something "by Adam"?
20 A. "After questioned by Adam contrary to
21 previous."
22 Q. Do you know what that refers to?
23 A. It must refer to that sentence in front of it.
24 "The mayor says he didn't instruct the chief not to
25 listen to it." The mayor must have said that after he

Page 95

1 was questioned by Adam, which is contrary to something
2 the mayor previously said.
3 Q. The next line is that "Kelly Ek has a long
4 serious history of health problems. She is a
5 whistleblower"?
6 A. Yes.
7 Q. What was that discussion all about?
8 A. That was a statement the mayor made.
9 Q. Up above you've got, far right and kind of
10 separated from the text, you've got a reference to "ask
11 mayor if he is following whistleblower laws (he didn't
12 know about it) don't know they existed."
13 A. "Didn't know they existed, cited Boeing."
14 Q. And then later on he's dubbing Kelly Ek
15 a whistleblower?
16 A. "The statement above relates to authorize
17 Michelle to work at home, quote, 'she's a
18 whistleblower.'" Someone asked the mayor if he is
19 following the whistleblower laws. He said he didn't
20 know about it, he didn't know they existed and he cited
21 something about Boeing. And then below he says Kelly Ek
22 is a whistleblower and then he says Sharon Hammer is a
23 whistleblower.
24 Q. Why was Sharon Hammer, according to your
25 notes, listed as a whistleblower?

Page 96

1 A. That's what the mayor said.
2 Q. What does the mayor, according to your notes
3 state: "She is alleging" --
4 A. -- "to a person intimidation, harassment,"
5 according to Willich.
6 Q. Can you tell from your notes who all was
7 present at the November 17, 2011 meeting?
8 A. Not on this one. Usually I make a notation of
9 who is present. I might not have at that particular
10 meeting, but I can see Bob Youngman's name here where he
11 made a statement about whistleblowers.
12 Like I said, the mayor was present, obviously
13 I was present, you can see that Joan Lamb is present. I
14 can't remember, but I would assume that Mayor Briscoe
15 was present, but that is just an assumption. I don't
16 believe he missed any of those meetings.
17 Q. There is reference to Adam King.
18 A. And Brad Miller would have been there also.
19 They say Adam King and Brad Miller on the work product.
20 Q. Can you recall what else was discussed at the
21 November 17, 2011 meeting?
22 A. My recollection is this mainly had to do with
23 administrative leave and an update on getting the
24 independent investigator going.
25 Q. Was anybody providing legal advice? I just

Page 97

1 need a yes or no. I don't want the content of it.
2 A. Yes.
3 Q. Was that with regard to the topics that you've
4 already stated?
5 A. Yes. There was threatened litigation. Yeah,
6 I think -- it was threatened, obviously, yeah.
7 Q. Do you recall any aspect of an offer of
8 settlement being discussed at the November 17, 2011
9 meeting which included you resigning from your position?
10 A. It may have been discussed, but I don't
11 recall.
12 Q. The day before that November 17, 2011 meeting
13 Mr. Donoval sent the letter, it's referenced as Hammer
14 135 through 138. He sent that to Mayor Willich and cc'd
15 the city council as well as incoming city council
16 members Griffith and Suhadolnik. Do you recognize that
17 letter?
18 A. Yes.
19 Q. On the second page, 136, do you see the
20 alphabetic marked paragraphs, A, a reference to you
21 resigning from the council for personal reasons?
22 A. I see where that is written.
23 Q. Do you recall whether that was discussed at
24 the November 17, 2011 meeting?
25 A. I believe this entire letter was just

Page 98

1 dismissed all together.
2 Q. Why is that?
3 A. I don't believe anybody was interested in it.
4 Q. Why is that?
5 A. No one was interested in it because we were
6 proceeding with the investigation.
7 Q. What did you think of Mr. Donoval's request
8 that you resign from your seat on the city council?
9 A. What did I think?
10 Q. Yes.
11 A. There was no reason to resign. I had not done
12 anything that was alleged against me.
13 Q. The harassment?
14 A. Correct.
15 Q. How did that make you feel that he was calling
16 for your resignation?
17 MR. NAYLOR: Object to the form.
18 THE WITNESS: It didn't make me feel one way
19 or the other. It was meaningless.
20 Q. (BY MR. SWARTZ) Did you feel at all like you
21 resigning would have been in the best interest of the
22 City at large?
23 A. There was no reason to resign.
24 Q. Well, the City could have accepted the
25 settlement if you resigned; right?

Page 99

1 MR. NAYLOR: Object to the form; calls for
2 speculation.
3 THE WITNESS: There was no reason to resign.
4 Q. (BY MR. SWARTZ) I can understand that is your
5 position. You are being called to resign, Mr. Donoval
6 is offering a settlement, and that is one of the terms,
7 is that you resign from the city council. Did you put
8 your self-interest ahead of the City in deciding not to
9 resign and preventing the City from accepting this
10 settlement?
11 A. No one else who sat on the council or the
12 mayor was interested in it either.
13 Q. Don't you have the sole ability to voluntarily
14 resign as a city council member?
15 A. I could resign for any reason I wanted to,
16 yes.
17 Q. In receipt of this letter you chose not to
18 resign; correct?
19 A. That's correct.
20 Q. Was there any mention of making a counteroffer
21 to Mr. Donoval's letter?
22 MR. NAYLOR: Object to the extent it calls for
23 attorney-client privileged communications.
24 THE WITNESS: Not that I remember.
25 Q. (BY MR. SWARTZ) The next page, 137, the last

Page 100

1 paragraph Mr. Donoval states that in the event that you
2 don't resign he believed that the remaining city council
3 members were obligated to contact the Blaine County
4 Prosecutor to seek removal of you in your position as a
5 city council member as a result of acts of willful
6 misconduct related to the harassment of Ms. Hammer. Do
7 you see that?
8 A. Yes.
9 Q. Was there any discussion by the other city
10 council members in the November 17, 2011 letter about
11 Mr. Donoval's position on that matter?
12 A. Not that I'm aware of.
13 Q. Under tab 6 you'll find the meeting minutes
14 for the November 17, 2011 meeting. Do you see those?
15 A. I see the agenda and then the minutes. Now
16 you can see who was at the meeting.
17 Q. That is the public meeting.
18 A. Right. Well, you'll probably see when you see
19 the executive session who went in. There you go.
20 Q. Where about?
21 A. SV 2073 at the bottom, Briscoe, Lamb, Ribí,
22 and Youngman.
23 Q. No reference to Adam King, no reference to
24 Mr. Miller; right?
25 A. No. The way the City wanted the minutes kept,

Page 101

1 unfortunately those pieces of information were no longer
2 kept.
3 Q. So if there was someone other than the mayor
4 or a city council member in an executive session, it
5 wouldn't be reflected on the minutes?
6 A. Or in any meeting, any council meeting
7 unfortunately.
8 Q. What was the reason for that?
9 A. They wanted simpler minutes with less detail.
10 Q. Who is "they"?
11 A. The administration.
12 Q. Who approves the minutes?
13 A. Council.
14 Q. Does looking at the minutes help spark any
15 recollection of anything else that was discussed in the
16 November 17, 2011 meeting?
17 MR. NAYLOR: Executive session?
18 MR. SWARTZ: Yes.
19 THE WITNESS: It looks like after the
20 executive session -- I would have to look at the agenda
21 though first to see if this was on the agenda or not.
22 It wasn't. The agenda was amended to add an
23 appointment of assistant to the clerk, and that was done
24 afterwards. So there may have been some discussion also
25 about a city clerk, an assistant city clerk position.

Page 102

1 And I don't recall my notes, I don't see anything about
2 that.
3 Q. Was there any discussion of criminal
4 allegations at the November 17, 2011 executive session?
5 A. Which meeting, the 17th?
6 Q. Correct.
7 A. That was one that Brad Miller was at.
8 Q. The second one.
9 A. Excuse me. Which one? The second one.
10 Q. Brad Miller was at the second meeting?
11 A. He was at the third meeting. He was at the
12 second and third meeting.
13 Q. There you go. The 14th and the 17th.
14 A. Correct. Yes. So your question?
15 Q. And we've already covered there was discussion
16 of criminal allegations at the November 14 meeting that
17 he was present at.
18 A. Yes.
19 Q. And those were criminal allegations being made
20 against Ms. Hammer.
21 MR. NAYLOR: Object to the form.
22 Q. (BY MR. SWARTZ) Correct?
23 A. And there may have been more than just Ms.
24 Hammer.
25 Q. And then there were -- my question to you is

Page 103

1 whether there were discussions of criminal allegations
2 against Ms. Hammer being discussed at the November 17
3 meeting as well.
4 A. Yes, that may have been discussed at that
5 meeting, but it may have been more than Ms. Hammer also.
6 Q. At the 17th meeting.
7 A. At the 17th, yes.
8 Q. By the 17th what other employees were being
9 implicated for potential criminal misconduct?
10 A. I would refer you back to the discussion we
11 had earlier about the November 11th meeting when
12 Michelle Frostenson outlined, I believe there were 12 or
13 13 items that covered various individuals.
14 Q. Tab 25.
15 A. Okay.
16 Q. Let's start with Ribi 274. Item number 1,
17 that is attributed to Sharon; correct?
18 A. Well, if you look at the attachment there were
19 other people involved in that also.
20 Q. Your notes only reference Sharon though?
21 MR. NAYLOR: Object to the form.
22 THE WITNESS: That's true.
23 Q. (BY MR. SWARTZ) Number 2, use of the City
24 vehicle, and there is a notation again to Sharon. Do
25 you see any reference to any other employees who are

Page 104

1 alleged to have misused a City vehicle?
2 A. Not in that particular note.
3 Q. Do you recall any being discussed in the
4 November 11th?
5 A. Not that I remember.
6 Q. Gas cards, again there is a reference to
7 Sharon, but I don't see any other employees mentioned,
8 do you?
9 A. Not that I remember.
10 Q. Do you see any in your notes?
11 A. Not that I see in my notes.
12 Q. The iPad purchase, whose iPad?
13 A. It doesn't indicate who.
14 Q. Do you have a recollection?
15 A. No.
16 Q. Do you have a recollection of who was being
17 accused of purchasing an iPad that they shouldn't have
18 purchased?
19 A. I don't remember.
20 Q. There is a reference in quotes on that same
21 item that says, "being in contact." Do you see that?
22 A. Yes.
23 Q. Does that help refresh your recollection of
24 who was alleged to have purchased the iPad without
25 authority?

Page 105

1 A. No.
2 Q. The purchase of the iPhone is number 5. Do
3 you see that there?
4 A. Yes.
5 Q. Do you know who was being blamed for the
6 purchase of these iPhones?
7 A. I have no idea, it just says "department
8 heads," plural.
9 Q. Number 6, the -- well, back up. The iPad
10 purchase, would that have been criminal conduct?
11 A. I don't know. It says City credit card was
12 not approved, so I don't know.
13 Q. So that's possible criminal conduct?
14 A. Possible. It wasn't one of the checked items,
15 so I don't know.
16 Q. The iPhones, is there anything indicating
17 whether that was wrong or authorized?
18 A. I don't remember the details of that
19 discussion in this stage.
20 Q. Do you recall any allegations of criminal
21 misconduct with regard to the iPhones?
22 A. I don't recall.
23 Q. Number 6, the \$800 chair, do you think that
24 was being attributed to Ms. Hammer?
25 A. I don't know. It just says "no

Page 106

Page 108

1 accountability."
2 Q. Who was supposed to be accountable for City
3 expenses?
4 A. Department head, finance department, city
5 administrator, mayor.
6 Q. Does it say anything on number 6 regarding the
7 chair not being authorized?
8 A. I don't remember the details about what was
9 said beyond what my notes say.
10 Q. Do you recall whether there was any discussion
11 regarding the purchase of the chair being criminal in
12 nature?
13 A. Not that I know of. It just says Mark
14 Hoffman's name.
15 Q. Number 7, reference to the Ray Franco bonus.
16 Do you know who gave him the bonus?
17 A. It doesn't say, it just says Jeff Carnes did
18 not know about it.
19 Q. Do you have any idea as you sit here today who
20 was being blamed for getting Mr. Franco the bonus?
21 A. I don't.
22 Q. Do you have any recollection of that being
23 discussed as being criminal in nature?
24 A. Not that I know of. It may have violated City
25 policy.

1 Q. The next two items, 10 and 11, Nick Carnes,
2 Mal Prior, the PERSI issues. Do you know who that was
3 being attributed to?
4 A. I don't recall.
5 Q. Was that being discussed as being criminal in
6 nature?
7 A. I believe there were some issues regarding
8 state laws regarding PERSI, yes.
9 Q. And so a potential criminal violation if they
10 were receiving PERSI benefits?
11 A. I don't remember exactly how that went.
12 Q. Nick Carnes being intoxicated at the symphony
13 and Sharon Hammer knowing about it. Do you see that?
14 A. Yes.
15 Q. Was there any discussion about that being
16 criminal in nature?
17 A. I don't believe so.
18 Q. Number 13, inventory, looks like Michelle
19 Frostenson is alleging that Ms. Hammer has known for
20 a while that things were walking away from City Hall.
21 Do you see that?
22 A. I think that was something that Sharon Hammer
23 said in an e-mail, is what I believe she said, but I
24 could be mistaken.
25 Q. Was there any discussion about that being

Page 107

Page 109

1 Q. The BLM fire invoice, issue number 8, the
2 allegation is that Sharon changed the bill and marked it
3 up; right?
4 A. To get more money from the BLM she padded his
5 hours knowingly. That's what it says.
6 Q. Was that attributed to any other employee
7 other than Sharon Hammer?
8 A. Not that I know of.
9 Q. Do you recall whether there was discussion
10 about that being criminal in nature?
11 A. I believe at a later point it was, yes,
12 because it involved the federal government.
13 Q. Number 9, Eric Adams getting \$10,000 in
14 raises. Do you see that?
15 A. Yes.
16 Q. Who was being accused of giving him these
17 raises?
18 A. I believe in that case it was Sharon Hammer.
19 Q. Any other employees being accused of giving
20 him the raises?
21 A. Not that I'm aware of.
22 Q. Was there any discussion about giving him the
23 raise being criminal in nature?
24 A. Not that I'm aware of. I believe that was
25 policy violation.

1 criminal in nature?
2 A. I think there was some discussion at some
3 later point about inventory and City property, where it
4 went.
5 Q. Who was being held responsible for inventory
6 that was walking away from City Hall?
7 A. I believe that was to be a question to be
8 answered during the investigation.
9 Q. Following the November 17 meeting --
10 THE WITNESS: Can I ask for a break?
11 MR. SWARTZ: Absolutely.
12 (Recess taken.)
13 Q. (BY MR. SWARTZ) Mr. Ribí, do you have any
14 testimony that you need to add to, correct or clarify?
15 A. One thing I'd like to clarify, you had asked a
16 question I think right after lunch about whether there
17 was some -- there was a question you were asking about
18 anger management and counseling and training, things
19 like that.
20 Q. Yeah, conflict resolution, that kind of thing?
21 A. Things like that.
22 Q. Yes.
23 A. There were some sessions that the council had
24 on kind of goal setting, conflict stuff in general, and
25 I very vaguely think and remember some of that. So I

Page 110

1 didn't want to deny that we had some of those with
2 staff. So I just wanted to mention that.
3 Q. It was your recollection it was the city
4 council at large, not just you.
5 A. No. It involved others and some staff, yeah.
6 So there was some of that.
7 Q. It was the full city council and some staff
8 members?
9 A. Sometimes we had one or two council members
10 that didn't really participate in a lot of that.
11 Q. Do you recall the staff who were participating
12 in it?
13 A. Probably the senior staff.
14 Q. But you don't recall who?
15 A. No. Anyway, I just wanted to clarify that. I
16 got to thinking about that.
17 Q. Thank you. Anything else?
18 A. No.
19 Q. Following the December 17 meeting -- and the
20 full complaint is right here, but there is just timeline
21 issues -- Mr. Donoval proceeded with filing a lawsuit,
22 and in that lawsuit you and Adam King, along with the
23 City of Sun Valley were named, and that lawsuit was
24 filed on November 21, 2011. Do you have a recollection
25 of being sued by Ms. Hammer about that time?

Page 111

1 A. Yeah. I don't remember the dates, but there
2 were so many things flying around.
3 Q. Do you remember being named personally on a
4 lawsuit by Ms. Hammer?
5 A. Yeah. I think Bob Youngman was also named in
6 it.
7 Q. There may have been a subsequent suit, and I
8 think we'll probably get there.
9 A. Okay. Anyway, yeah.
10 Q. At the time that you were named as a defendant
11 along with Mr. King, after that point was there any
12 discussions about you and Mr. King needing to recuse
13 yourselves from any of the executive session discussions
14 regarding Ms. Hammer?
15 A. No.
16 Q. How did it make you feel being sued
17 individually?
18 MR. NAYLOR: Object to the form.
19 THE WITNESS: How did it make me feel?
20 Q. (BY MR. SWARTZ) Yes.
21 A. What do you mean by "feel"?
22 Q. You know how people have feelings; sometimes
23 they are happy, sometimes they are sad, sometimes they
24 are mad, sometimes they are irritated.
25 A. I was concerned because none of the

Page 112

1 allegations in there about me were true.
2 Q. What was your concern?
3 A. That was my feeling.
4 Q. You were concerned?
5 A. Yes.
6 Q. What were you concerned about?
7 A. I was concerned because they weren't true.
8 Q. Were you concerned about people's perception
9 of those allegations being made against? Were you
10 concerned about how it might affect your reputation?
11 What do you mean by you were concerned?
12 MR. NAYLOR: Object to the form.
13 THE WITNESS: You asked me that question and
14 that is the answer I gave you.
15 Q. (BY MR. SWARTZ) You were just flat out
16 concerned?
17 A. Yeah. Just concerned, yeah.
18 Q. Were you upset that untrue allegations were
19 made against you?
20 MR. NAYLOR: Object to the form.
21 THE WITNESS: I wasn't upset. I was
22 concerned.
23 Q. (BY MR. SWARTZ) Now I'm showing you a
24 document marked as SH-TIMELINE 88, and it's a copy of a
25 Wednesday, November 23, 2011 article from the Mountain

Page 113

1 Express, and there is a quote that is being attributed
2 to you over on the second column.
3 A. It looks like it's all been cut and pasted in
4 various parts there.
5 Q. I'm asking you to take a look here where it
6 says "Ribí denies the allegations." Do you see that
7 there?
8 A. I see what is there. I don't know if that's
9 the full article though.
10 Q. Do you see this section here: "The charges
11 against me are baseless and defamatory and will be
12 proven as such in a court of law. He stated the voters
13 of this county were introduced to Jim Donoval in the
14 last election [when he ran for Senate] and they have
15 already voted on his credibility." Do you see that
16 there?
17 A. Yes. Some of that is cut off, like I said.
18 I've had experience with Mr. Donoval's
19 documents where he's cut and pasted things and left
20 certain things out. So I don't know that that is
21 absolutely the complete one, but that may be.
22 Q. That may be a quote that was attributed to
23 you?
24 A. I said something to that effect, yes. Except
25 for the part in brackets, I believe that was added by

Page 114

1 the newspaper.
2 Q. In the lawsuit that was filed on the 21st and
3 that you are commenting on in that November 23rd, 2011
4 article, you also filed an affidavit; is that correct?
5 A. No. I filed that affidavit in opposition to a
6 motion for temporary restraining order, not in the
7 actual lawsuit. You see that it says "in opposition to
8 a motion for a temporary restraining order."
9 Q. Correct. It was filed in the lawsuit. I
10 understand you filed it in response to that motion, but
11 it was filed in that lawsuit that you are commenting --
12 A. That is why I answered the way I did, the way
13 your question was phrased.
14 Q. That's the lawsuit that was filed on the 21st
15 and that you were commenting on in the Statesman [sic]
16 article; correct?
17 A. My comment was on the lawsuit. This affidavit
18 is in response to the temporary restraining order.
19 Q. And that was a motion that was filed in the
20 lawsuit that you were commenting on in the article;
21 correct?
22 A. Yes.
23 Q. This affidavit was prepared by you and filed
24 by you on November 23rd, 2011; is that correct?
25 A. It was prepared by Keith Roark and then my

Page 115

1 review, yes.
2 Q. You assisted Mr. Roark in preparing it.
3 A. I reviewed it, yes.
4 Q. Did you review it before you signed it?
5 A. Yes.
6 Q. Did you find all of its contents to be
7 accurate?
8 A. Yes.
9 Q. Go ahead and turn to the second page of your
10 affidavit. Do you see on paragraph 8 where you state:
11 "During the course of the executive session matters were
12 presented to the council that caused all members serious
13 concern about possible misuse of public funds and
14 equipment by the plaintiff?"
15 A. Yes.
16 Q. Who is the plaintiff?
17 A. I believe that is Sharon Hammer.
18 Q. Do you want to confirm that?
19 A. (Reviewing document.) Yes.
20 Q. You then go on in paragraph 9 -- we can skip
21 9. Go to 10. You go on to state that: "The mayor and
22 city council have reason to believe that the plaintiff
23 may have committed serious misconduct, including
24 possible criminal violations of statutes dealing with
25 the misuse of public funds and falsification of public

Page 116

1 records by the plaintiff." Do you see that?
2 A. The second sentence?
3 Q. Yes.
4 A. Yes.
5 Q. Who authorized you to disclose information
6 that was being discussed in public session or in
7 executive session?
8 MR. NAYLOR: Object to the form.
9 THE WITNESS: What was your question?
10 Q. (BY MR. SWARTZ) Who authorized you to
11 disclose information that was being discussed in
12 executive session?
13 A. No one authorized me.
14 Q. Did disclosing this in the public record
15 violate the city council's policy on ethics with regard
16 to executive session?
17 A. No.
18 Q. Why is that?
19 A. This is in response to a temporary restraining
20 order, and if you take this in context to what is said
21 about me in the temporary retaining order, you will see
22 why this was necessary.
23 Q. Can you explain it to me.
24 A. Yes. There were accusations made against me,
25 and I am defending myself.

Page 117

1 Q. What accusations are you responding to in
2 here?
3 A. The lawsuit and the temporary restraining
4 order.
5 Q. What accusation is paragraph 8 responding to?
6 A. By his letter of November 18th to the mayor --
7 MR. NAYLOR: Paragraph 8.
8 THE WITNESS: That refers to the temporary
9 restraining order.
10 Q. (BY MR. SWARTZ) There was an allegation in
11 there about what occurred in the executive session?
12 A. Yes. No, it refers to the use of public funds
13 and equipment and misuse.
14 Q. So how is it that you disclosing what occurred
15 in the executive session was defending allegations that
16 were being made against you?
17 A. It's in context.
18 Q. What context?
19 A. In context to the temporary restraining --
20 what is said in their temporary restraining order.
21 Q. What exactly is paragraph 8 responding to?
22 A. We would have to go through that.
23 Q. The motion for temporary restraining order?
24 A. Yes.
25 Q. You don't recall as you sit here today --

Page 118

1 A. Not today.
2 Q. -- why you felt compelled to disclose what was
3 going on in an executive session?
4 MR. NAYLOR: Object to the form.
5 THE WITNESS: That is irrelevant.
6 Q. (BY MR. SWARTZ) What is irrelevant?
7 A. What you just said.
8 Q. You feeling compelled to disclose what
9 occurred in executive session to defend yourself?
10 A. I am responding -- this affidavit is
11 responding to a temporary restraining order.
12 Q. Right. I'm asking what compelled you to
13 disclose what occurred in an executive session to defend
14 yourself.
15 MR. NAYLOR: Object to the form; asked and
16 answered.
17 THE WITNESS: Yeah.
18 MR. NAYLOR: He said it's related to the
19 temporary restraining order, that's what compelled him.
20 I don't know if you two are communicating.
21 THE WITNESS: I said that several times.
22 Q. (BY MR. SWARTZ) You need to see the
23 restraining order in order to answer the question.
24 A. I don't recall at this point what was said in
25 the temporary restraining order.

Page 119

1 Q. Why was it important to disclose in an
2 affidavit that the city council had serious concerns
3 about possible misuse of public funds and equipment by
4 the plaintiff?
5 MR. NAYLOR: Objection; asked and answered.
6 THE WITNESS: Because of something that was
7 said in the temporary restraining order.
8 Q. (BY MR. SWARTZ) You don't recall what?
9 A. Today I don't.
10 Q. Why was it necessary for you to state in an
11 affidavit that there were going to be
12 possible criminal -- serious misconduct and possible
13 criminal violations of statutes dealing with misuse of
14 public funds and falsification of public records by the
15 plaintiff?
16 A. Same answer as the last time.
17 Q. You don't recall what you were responding to?
18 A. Correct.
19 Q. You think that a city council member acting
20 through their private attorney to defend allegations
21 being made against them in a lawsuit being filed against
22 them personally is an exception to the ethics policy
23 that prohibits disclosing what transpires in an
24 executive session?
25 MR. NAYLOR: Object to the form.

Page 120

1 THE WITNESS: Yes.
2 Q. (BY MR. SWARTZ) Here is the ethics policy
3 marked as Hammer 1519 through 1520. And best as I can
4 tell it's bullet point number 8 on the second page:
5 "Refrain from discussion of confidential proceedings
6 when circumstances allow the city council to go" --
7 MR. NAYLOR: Hang on. Bullet point 8 it says:
8 "Conduct all business in open meetings."
9 MR. SWARTZ: Are we looking at the same thing
10 here under the ethics code of conduct?
11 MR. NAYLOR: Oh, code of conduct.
12 Q. (BY MR. SWARTZ) "Refrain from discussion of
13 confidential proceedings. When circumstances allow the
14 city council to go into executive session, council
15 members agree to respect the privileged nature of all
16 discussions held in executive sessions and that all
17 lawful discussions should remain confidential." Did I
18 read that correctly?
19 A. I believe you did.
20 Q. Do you see an exception anywhere in this code
21 of conduct relating to executive session that allows you
22 to disclose information from executive sessions for your
23 own personal use?
24 MR. NAYLOR: Object to the form.
25 THE WITNESS: It just says "refrain from

Page 121

1 discussion," and it says "and that all lawful
2 discussions should remain confidential." There is a
3 lawsuit, and I have an obligation to respond to it.
4 Q. (BY MR. SWARTZ) I don't see that exception.
5 Can you point me to where that is?
6 MR. NAYLOR: Object to the form;
7 argumentative.
8 THE WITNESS: I disagree with you.
9 Q. (BY MR. SWARTZ) There is an exception in
10 here?
11 MR. NAYLOR: Object to the form. He's just
12 responding to your question.
13 Q. (BY MR. SWARTZ) My question to you was: Is
14 there an exception listed in this code of conduct? Your
15 response was: I disagree with you. I don't think we
16 are connecting.
17 A. I disagree with your assertion.
18 Q. I'm asking whether there is an exception to
19 this paragraph 8 on revealing --
20 A. Yes.
21 MR. NAYLOR: Let him ask the question, and
22 then we can read back your answer from about two
23 questions ago.
24 Q. (BY MR. SWARTZ) So what is the exception to
25 paragraph 8?

Page 122

1 A. The record gives my answer about two questions
2 ago.
3 MR. SWARTZ: Why don't you go and help Beverly
4 find it.
5 (Record read back.)
6 Q. (BY MR. SWARTZ) Do you see in the code of
7 conduct that there is an exception to paragraph 8 in the
8 event of a lawsuit?
9 MR. NAYLOR: Object to the form.
10 THE WITNESS: The court reporter just read
11 what I said.
12 Q. (BY MR. SWARTZ) I'm just asking whether you
13 see an exception in the code of conduct to paragraph 8.
14 It's either a yes or a no.
15 A. Yes. The court reporter just read what I saw
16 as the exception.
17 Q. That there was a lawsuit and you were
18 obligated to respond to it?
19 A. What she just read.
20 Do you want me to read it again?
21 MR. SWARTZ: Sure. That would be very
22 helpful.
23 (Record read back.)
24 Q. (BY MR. SWARTZ) The last sentence that
25 Beverly just read, is that written in the code of

Page 123

1 conduct anywhere?
2 A. "Refrain from discussions and that all lawful
3 discussions should remain confidential."
4 Q. Yes, you are reading from paragraph 8;
5 correct?
6 A. Yes.
7 Q. The last sentence to your prior answer --
8 A. I added that. And there is a lawsuit, and I
9 have an obligation to respond via this affidavit.
10 Q. Okay. Very good. I just wanted to make sure
11 we are on the same page. You were adding that to
12 paragraph 8, not reading it on paragraph 8.
13 A. That is what I did initially, yes.
14 Q. Were you responding to this lawsuit on your
15 own behalf as an individually named party?
16 MR. NAYLOR: Object to the form to the extent
17 it calls for a legal conclusion.
18 THE WITNESS: I don't recall.
19 Q. (BY MR. SWARTZ) Were you acting for the City
20 when you filed this affidavit?
21 A. I don't recall.
22 MR. NAYLOR: Same objection.
23 Q. (BY MR. SWARTZ) If you'll look at the first
24 page of your affidavit, the first defendant listed is
25 yourself, and it says "as an individual"; right?

Page 124

1 A. Yes.
2 Q. Did you understand that you were being sued
3 individually?
4 A. I don't recall.
5 Q. Is Mr. Roark your personal attorney or is that
6 an attorney that the City hired for you?
7 A. He's my attorney.
8 Q. I'm trying to get you a copy of the temporary
9 restraining order here.
10 Let's move on down to paragraph 13 of your
11 affidavit. Do you see that on page 3?
12 A. Yes.
13 Q. There you state: "The plaintiff's attorney,
14 who is also her husband, has made a series of threats to
15 me, the mayor, the city attorney, and my wife that
16 demonstrate that his action in filing this case is
17 designed to effect a political result and extract a
18 large sum of money from the City. And in support of
19 this averment I attach hereto and incorporate by
20 reference herein unredacted exhibits." And then you go
21 on and list four letters. Do you see that there?
22 A. Yes.
23 Q. Why did you undertake the effort to submit
24 them as unredacted exhibits?
25 MR. NAYLOR: Object to the form.

Page 125

1 THE WITNESS: I don't remember.
2 Q. (BY MR. SWARTZ) Do you remember whether
3 Mr. Donoval submitted them as redacted exhibits?
4 A. I don't remember.
5 Q. What were the series of threats that Mr.
6 Donoval made to you that you refer to in paragraph 13?
7 A. Threats to me?
8 Q. That's what you state under oath.
9 A. They were obviously in the letter of November
10 12, the letter of November 16, and the letter of
11 November 20. The undated November 18 letter were
12 threats made to my wife.
13 Q. What was the threat made to your wife?
14 A. I don't recollect exactly what was said in
15 that letter, but they were very vile.
16 Q. They were vile threats?
17 A. Yes.
18 Q. How did that make you feel?
19 MR. NAYLOR: Object to the form.
20 Q. (BY MR. SWARTZ) How did that make you feel?
21 A. I'm sorry. You asked me a question.
22 MR. NAYLOR: Object to the form.
23 THE WITNESS: Concerned.
24 Q. (BY MR. SWARTZ) In what way?
25 A. Concerned for my wife.

Page 126

1 Q. Anything else?
2 A. No.
3 Q. What were the threats that Mr. Donoval made
4 against the mayor?
5 MR. NAYLOR: Object to the form; misstates his
6 testimony.
7 Q. (BY MR. SWARTZ) You can read your testimony
8 right there in front of you. "Mr. Donoval has made a
9 series of threats to me, the mayor..." Do you see that?
10 A. Yep.
11 Q. What were the series of threats made to the
12 mayor?
13 A. Those were in those letters, except probably
14 item C and possibly item D. So probably A and B.
15 Q. Any others that you can recall?
16 A. That's what's referred to in item 13.
17 Q. Next you list the city attorney as being the
18 recipient of a series of threats. What are the threats
19 that were made against the city attorney by Mr. Donoval?
20 A. Those, I assume, would also be in items A
21 and B.
22 Q. Your wife you identified the vile threats
23 being in Exhibit C; right?
24 A. Correct.
25 Q. Sorry. Attachment C.

Page 127

1 A. Correct.
2 Q. What is the political result that you believe
3 Mr. Donoval was trying to effect?
4 A. Removing me from office.
5 Q. Why did you come to that conclusion?
6 A. Because that is something he requested, my
7 resignation.
8 Q. In that offer letter?
9 A. I believe so.
10 Q. Did you feel like his false statements about
11 your health or false statements that he made in the
12 lawsuit against you was designed to tarnish your
13 reputation?
14 MR. NAYLOR: Object to the form.
15 THE WITNESS: I believe that was part of his
16 effort to obtain a settlement, yes.
17 Q. (BY MR. SWARTZ) Did you believe that he was
18 trying to tarnish your reputation in part also to have
19 others begin to call for your resignation?
20 MR. NAYLOR: Object to the form; calls for
21 speculation.
22 THE WITNESS: I have no idea.
23 Q. (BY MR. SWARTZ) Was he making these false
24 statements about you in a closed forum where it was just
25 you and he, or was he sharing these false statements

Page 128

1 about you with other people?
2 A. There were all the city council, the mayor,
3 and two citizens on that list.
4 Q. The two citizens were the city council elect?
5 A. Yes. They were still citizens at that point.
6 Q. Were the statements that he made about you in
7 the temporary restraining order motion that you are
8 responding to in this affidavit, were those statements
9 made in a public forum or in a private closed forum?
10 MR. NAYLOR: Object to the form.
11 THE WITNESS: Would you restate that question.
12 Q. (BY MR. SWARTZ) Sure. These statements that
13 you are defending yourself against in your affidavit,
14 were those statements made in a public forum or in a
15 closed forum, both, do you know?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: What do you mean "forum," public
18 or private forum?
19 Q. (BY MR. SWARTZ) Forum, it's another word for
20 place. Mountain Express would be a public forum. The
21 city council in public session would be a public forum.
22 Shouting from a rooftop would be a public forum. A
23 letter to one person or a telephone call with one person
24 would be a private forum.
25 A. Thank you.

Page 129

1 MR. NAYLOR: Same objection.
2 THE WITNESS: So could you say the question
3 again then.
4 Q. (BY MR. SWARTZ) Yes. Were the statements
5 that Mr. Donoval were making about you that believed to
6 be false and that you were defending against in your
7 affidavit, were those being made in a public forum or in
8 a private forum?
9 MR. NAYLOR: Same objection.
10 THE WITNESS: In a public forum.
11 Q. (BY MR. SWARTZ) So you now have a copy of the
12 November 21st emergency motion for temporary restraining
13 order that was filed against you individually and which
14 you've already testified to is the reason why you filed
15 your affidavit. Please take all the time you need to go
16 through this temporary restraining order and identify
17 for me the allegations being made against you that
18 caused you to write paragraph 8 in your affidavit.
19 MR. NAYLOR: For the record, that is Hammer
20 767 to 784.
21 MR. SWARTZ: Correct.
22 And we can go off the record and you can take
23 your time to review it.
24 THE WITNESS: I'll also need the verified
25 complaint, because it's part of the TRO.

Page 130

1 MR. SWARTZ: We'll get you that too.
2 MR. NAYLOR: Let's go off the record.
3 MR. SWARTZ: Yes.
4 (Off the record.)
5 (Recess taken.)
6 Q. (BY MR. SWARTZ) Mr. Ribi, you've had an
7 opportunity to review the emergency motion for temporary
8 restraining order, along with the verified complaint,
9 both dated November 21st; correct?
10 A. Yes.
11 Q. You were reviewing those so that you could
12 identify what allegations were in those documents that
13 you were responding to in paragraph 8 of your affidavit;
14 correct?
15 A. Yes.
16 Q. Have you identified some?
17 A. Yes.
18 Q. Which document do you want to start with?
19 A. Start with the TRO, or whatever happens to be
20 on top.
21 Q. Okay. Which paragraph should I be looking at?
22 A. Paragraph 9.
23 Q. Okay.
24 A. Paragraph 8 refers to executive session
25 matters presented — or matters represented causing

Page 131

1 members to have serious concern.
2 Paragraph 9 alludes to the fact that these
3 were done covertly outside, which was not true, and that
4 is why paragraph 8 refers to the fact these were
5 presented in executive session.
6 Q. Okay. Anything else?
7 A. Paragraph 11, this refers to the discussion on
8 November 10th and the calling of the executive session,
9 actually and the executive session itself, where in fact
10 all these matters were discussed.
11 Q. Anything else?
12 A. Paragraph 13 refers to the November 14th
13 executive session where these matters were discussed and
14 the special investigation was determined to begin
15 regarding these issues, although in here it just talks
16 about Ms. Hammer's side of it and not the other side of
17 the issue.
18 Q. Anything else?
19 A. I believe paragraph 17 talks about the
20 November 17th special Sun Valley City Council, where
21 again the city council discussed in executive session
22 these matters. This one, again, only talks about the
23 one side where, in fact, the possible misuse of public
24 funds and equipment was discussed.
25 Q. Anything else in that document?

Page 132

1 A. We talked about paragraph 9 already, so no.
2 Q. If I understand you correctly, really
3 paragraph 8 is to say, No, it wasn't me individually, it
4 was the council at large that looked at this information
5 and the council at large that had the concerns of misuse
6 of public funds and equipment by the plaintiff; is that
7 a fair summary?
8 A. Paragraph 8 says exactly what it says, yes.
9 Q. I was trying to summarize the paragraphs that
10 you pointed out in the TRO; is that a fair summary of
11 why you've included paragraph 8?
12 A. The paragraphs I pointed out was why, yes.
13 Q. The summary, that I'm trying to make sure we
14 are on the same page, is generally, Hey, it wasn't me
15 individually, it was the council at large.
16 A. Yes, and it was more than just talking about
17 the harassment, alleged harassment of me.
18 Q. Against you.
19 A. Yes. It was these issues discussed in
20 paragraph 8. And when you go to the verified complaint,
21 it's the same issues.
22 Q. Same paragraph numbers?
23 A. I think they were numbered differently. Go to
24 paragraph 27, which addresses the November 11th meeting,
25 same issue.

Page 133

1 Q. Any others?
2 A. Yes. Paragraph 29 addresses the November 14th
3 meeting, same issue.
4 Q. Anything else?
5 A. And paragraph 32, which addresses the November
6 17th meeting, same issue.
7 Q. Any other allegations in the TRO or the
8 verified complaint that you believe paragraph 8 of your
9 affidavit was in response to?
10 A. There may be others, but those are the
11 specific ones I highlighted.
12 Q. How about paragraph 10 where you state: "The
13 mayor and council had reason to believe the plaintiff
14 may have committed serious misconduct, including
15 possible criminal violations of statutes dealing with
16 misuse of public funds and falsification of public
17 records by the plaintiff." Would those be the same
18 paragraphs that you've already cited?
19 A. I believe that sentence refers to the sentence
20 before it, which is by his letter of November 18th, the
21 mayor, not the city council or myself, placed the
22 plaintiff on administrative leave.
23 Q. What allegation are you defending yourself
24 against by stating that Ms. Hammer had engaged in
25 possible criminal violations?

Page 134

1 A. I believe there is a statement in the TRO that
2 refers to something related to that first sentence.
3 MR. NAYLOR: He's talking about the second
4 sentence.
5 THE WITNESS: Yes. And I'm saying that the
6 second sentence relates to the first sentence.
7 Q. (BY MR. SWARTZ) Am I understanding you
8 correctly that the complaint and the TRO are essentially
9 saying, Ribí did this individually. And your response
10 to that is, No, I didn't do it individually, we acted as
11 a whole, the city council and the mayor.
12 A. That's correct. And in particular the
13 administrative leave was an act of the mayor, not even
14 the city council, let alone me.
15 Q. Did reviewing the TRO or the verified
16 complaint help remind you why it was significant for you
17 to submit the unredacted exhibits?
18 A. I was not thinking about that issue when I was
19 looking at it. I was only looking at it in relationship
20 to paragraph 8.
21 Q. Was there anything in the TRO or the complaint
22 that you saw that paragraph 15 would be responsive to?
23 A. I wasn't looking for that when I looked at it.
24 Q. Do you recall anything?
25 A. I don't recall because I wasn't paying

Page 135

1 attention to that issue.
2 Q. And paragraph 15 is stating that the city
3 clerk, the city treasurer have also been placed on leave
4 after informing the mayor that they would be afraid to
5 return to work if Sharon Hammer is still functioning in
6 the position of city administrator. What is the
7 significance of stating that in your affidavit?
8 A. It has some relationship to the temporary
9 restraining order and the reason for it.
10 Q. The reason for placing Ms. Hammer on leave?
11 A. I believe so.
12 Q. Did anyone at the City ask you to submit this
13 affidavit?
14 A. I don't recall.
15 Q. In paragraph 17 you state that: "The
16 plaintiff and her husband acting in the interest of Ms.
17 Hammer, rather than the interest of the City of Sun
18 Valley, would obstruct the efforts to enlist Brad
19 Miller." Do you see that there?
20 A. Yes.
21 Q. And there you are talking about your personal
22 concern; right?
23 A. Yes.
24 Q. What does your personal concern have to do
25 with the temporary restraining order or the verified

Page 136

1 complaint?
2 A. Those were observations from executive
3 session, and the mayor's actions in attempting to,
4 number one, as I mentioned earlier in the deposition,
5 not placing the city administrator on leave and then
6 further attempting to delay the investigation itself.
7 Q. You didn't want the investigation delayed.
8 A. No. The mayor did.
9 Q. Why; do you know?
10 A. I'm not sure.
11 Q. Why did you think that the plaintiff and her
12 husband would be obstructing the city attorney's efforts
13 to enlist the representation of Mr. Miller?
14 MR. NAYLOR: Object to the form.
15 THE WITNESS: Could you restate or say your
16 question again.
17 Q. (BY MR. SWARTZ) Why did you believe when you
18 completed this affidavit on November 23rd that the
19 plaintiff and her husband would obstruct the efforts by
20 city attorney, Adam King, to enlist the representation
21 of Mr. Miller?
22 MR. NAYLOR: Object to the form; misstates the
23 testimony.
24 THE WITNESS: That is not what this says. It
25 says, I'm concerned the mayor of Sun Valley is acting to

Page 137

1 further the interest.
2 Q. (BY MR. SWARTZ) Because of his close
3 relationship with the plaintiff and her husband?
4 A. Yes. It looks like it's missing a comma after
5 the paren.
6 Q. Your belief that the investigation into
7 possible improper and/or illegal conduct, as you state
8 in paragraph 18, would be compromised if the TRO was
9 granted. What formed the basis of that belief?
10 A. Discussions with the attorneys in executive
11 session.
12 Q. How was the investigation going to be
13 compromised?
14 MR. NAYLOR: Do you want to ask him what he
15 thinks rather than --
16 Q. (BY MR. SWARTZ) Yes. What did you understand
17 would be compromised with regard to the investigation if
18 the TRO was granted?
19 A. We were told that there was significant --
20 MR. NAYLOR: You are forbidden to talk about
21 what you were told. He's asking you what you thought,
22 that how the investigation would be impacted if she was
23 not on leave.
24 THE WITNESS: Okay.
25 Q. (BY MR. SWARTZ) If the TRO was granted, you

Page 138

1 felt like the investigation would be compromised; right?
2 A. Yes.
3 Q. Why did you feel that?
4 A. It was my feeling, based on what I understood,
5 that data and information important to the investigation
6 could be compromised at the City.
7 Q. Was that a possibility or it was believed that
8 it was going to occur?
9 MR. NAYLOR: His belief again?
10 MR. SWARTZ: Yes.
11 THE WITNESS: It was my belief, based on what
12 I was told, that it could be -- there was a high
13 probability.
14 Q. (BY MR. SWARTZ) And it was going to be Ms.
15 Hammer who was going to compromise the documents and
16 data that were important to the investigation?
17 A. Possibly.
18 Q. Who suggested Ms. Hammer was going to alter
19 documents or data?
20 MR. NAYLOR: To the extent that calls for
21 attorney-client privilege, you can't testify about that.
22 Q. (BY MR. SWARTZ) That were important to the
23 investigation.
24 A. I can't testify to that.
25 Q. That was an attorney's opinion, is what you

Page 139

1 are saying?
2 MR. NAYLOR: You can answer that.
3 THE WITNESS: That was an attorney's opinion.
4 Q. (BY MR. SWARTZ) Was it Adam King?
5 MR. NAYLOR: Okay. Stop there.
6 Q. (BY MR. SWARTZ) An attorney had an opinion
7 that Sharon Hammer was going to compromise data or
8 documents that were important to the investigation; is
9 that right?
10 MR. NAYLOR: Object to the form.
11 THE WITNESS: Yes.
12 Q. (BY MR. SWARTZ) And as of November 23rd,
13 we've had three executive sessions, the 11th, the 14th,
14 and the 17th of November; right?
15 A. Correct.
16 Q. And we know that the attorneys present at the
17 first one was Mr. King; the second one Mr. King,
18 Mr. Miller; and the third one Mr. King, Mr. Miller;
19 right?
20 A. I believe that is correct.
21 Q. In paragraph 16 you state that: "Naming
22 Mr. King in the lawsuit was an obvious attempt to place
23 the City at a disadvantage in defending the claims for
24 injunctive relief." Do you see that?
25 A. Yes.

Page 140

1 Q. Why did you believe that that was the obvious
2 attempt?
3 A. Because it would require new counsel to be
4 appointed who will not have sufficient time to prepare
5 for any hearing on an application for temporary
6 restraining order or preliminary injunction.
7 Q. Did you understand the allegations that were
8 being made against Mr. King in the verified complaint
9 and the TRO?
10 A. I believe so.
11 Q. What were those?
12 A. Those were the ones that were spelled out in
13 the complaint.
14 Q. What were the allegations being made against
15 Mr. King?
16 A. The ones in the complaint.
17 Q. Do you recall what they were?
18 A. At this point right now I don't. At the time
19 I did.
20 Q. Allegations are being made against Mr. King in
21 the complaint and in the TRO; right?
22 A. Yes. At the time I knew what they were, but
23 this is two and a half years later.
24 Q. And was it your opinion that they were
25 baseless allegations and trumped up just to name

Page 141

1 Mr. King?
2 MR. NAYLOR: Object to the form.
3 THE WITNESS: I think the statement speaks for
4 itself.
5 Q. (BY MR. SWARTZ) Why was it so obvious to you
6 that it was just an attempt to prevent him from working
7 on the case?
8 A. I believe there was a time certain need to
9 respond because of the timing of this.
10 Q. Why would naming Adam King be an attempt to
11 place the City at a disadvantage in defending the
12 claims?
13 MR. NAYLOR: Objection; asked and answered.
14 Q. (BY MR. SWARTZ) Is it that you think that
15 naming Adam King in the complaint was an obvious attempt
16 to place the City at a disadvantage?
17 A. It's because the City wouldn't have sufficient
18 time to prepare by naming someone else. The City
19 wouldn't have sufficient time to prepare for a hearing
20 on application for a TRO or a preliminary injunction.
21 Q. Why couldn't Mr. King still appear on behalf
22 of the City?
23 A. I answered that.
24 Q. I'm not following. Where do you see in your
25 affidavit where it says because they named Adam King he

Page 142

1 couldn't represent the City?
2 MR. NAYLOR: Object to the form.
3 Q. (BY MR. SWARTZ) Mr. Naylor is pointing stuff
4 to you.
5 MR. NAYLOR: It's the same thing he's read
6 twice already.
7 MR. SWARTZ: Mr. Naylor can testify later.
8 He's going to be a good witness.
9 MR. NAYLOR: I'm not testifying. I'm just
10 pointing it --
11 Q. (BY MR. SWARTZ) I'm asking about your
12 understanding.
13 A. I've read it. Do you want me to read it a
14 third time?
15 Q. I understand the language there. I'm not
16 seeing where in the language it says that naming Adam
17 King meant that he couldn't represent the City.
18 A. You'll have to ask someone else that question.
19 I can't answer that question.
20 Q. Who else would I ask about your opinion that
21 you have rendered in an affidavit under oath?
22 A. I told you I rendered that two and a half
23 years ago. And at the time there was a reason, but I
24 don't recall right now why.
25 Q. So who should I speak to about your opinion?

Page 143

1 MR. NAYLOR: Object to the form;
2 argumentative. He's answered your question.
3 THE WITNESS: I have answered the question.
4 Q. (BY MR. SWARTZ) You haven't identified the
5 person that you are suggesting I need to speak to about
6 your opinion.
7 MR. NAYLOR: He testified that he does not
8 recall today why he had that opinion at that time.
9 That's what he just said.
10 THE WITNESS: Yeah, that's exactly right.
11 MR. SWARTZ: Mr. Naylor, if you have an
12 objection you can make it, but I don't appreciate you
13 leading your witness.
14 MR. NAYLOR: I'm not leading him. I'm
15 pointing out to you why I'm objecting as asked and
16 answered. And it's belligerent and it's argumentative,
17 and I've made those objections, and so I'm telling
18 you --
19 MR. SWARTZ: Enough of the speaking
20 objections. Just make them. We need to move on.
21 MR. NAYLOR: Go ahead.
22 Q. (BY MR. SWARTZ) By the time of your November
23 23rd, 2011 affidavit that you filed because you felt
24 like you needed to defend yourself, you had been accused
25 of harassing Ms. Hammer, Mr. Donoval had made multiple

Page 144

1 false statements about you, your resignation was
2 demanded, you were named as an individual defendant in a
3 lawsuit, and vile threats were being made against your
4 wife by Mr. Donoval.
5 At that point in time did you feel like you
6 might be biased toward Ms. Hammer and that perhaps you
7 should remove yourself from any discussions regarding
8 her employment or allegations being made against her?
9 MR. NAYLOR: Object to the form.
10 THE WITNESS: No.
11 Q. (BY MR. SWARTZ) At that point in time you
12 felt like you could remain completely impartial?
13 A. Yes.
14 Q. You are now looking at a November 25th, 2011
15 letter from Mr. Donoval to Mr. Naylor, Bates No.
16 SH-TIMELINE 108 to 109. Do you recognize that letter at
17 all?
18 A. Not necessarily. I don't know whether I
19 received this letter or not. I'll have to read it. You
20 have to excuse me, there were so many letters and so
21 many things flying at that time it's hard to sort some
22 of this out.
23 (Reviewing document.) Okay. I looked at it.
24 Q. Does that help refresh your recollection
25 whether you've seen that before?

Page 145

1 A. No, it doesn't.
2 Q. Did anyone ever convey to you that placing Ms.
3 Hammer on administrative leave was considered adverse
4 employment or disciplinary action according to the
5 International City/County Managers Association?
6 A. I don't believe we discussed that.
7 Q. Were you advised that another settlement offer
8 to dismiss all claims against Sun Valley, Mr. King with
9 prejudice would occur if you would resign from the city
10 council?
11 MR. NAYLOR: Object to the extent that it
12 calls for an attorney-client privileged communication.
13 If you learned of that from -- if your answer is in
14 response to an attorney providing you this information,
15 then I instruct you not to answer.
16 THE WITNESS: I don't believe I received this.
17 MR. NAYLOR: That's not the question.
18 THE WITNESS: What was the -- I'm trying to
19 sort out two things here.
20 Q. (BY MR. SWARTZ) For a second time Mr. Donoval
21 is making an offer to resolve claims against the City,
22 and as part of that offer was asking for your
23 resignation. Were you ever asked to resign a second
24 time?
25 A. No.

Page 146

1 Q. A couple more pages, we are looking at a
2 November 30, 2011 article from the Mountain Express, it
3 says Hammer 898. Do you recognize this article?
4 A. Not necessarily. It's probably an excerpt of
5 something. It does not have Mr. Donoval's comments
6 attached to it.
7 MR. NAYLOR: Just the question is: Do you
8 recognize that document?
9 MR. SWARTZ: Just the article.
10 MR. NAYLOR: The article.
11 THE WITNESS: I recognize the article, yes.
12 Q. (BY MR. SWARTZ) Do you recognize this as the
13 article that is reporting on your affidavit of November
14 23rd?
15 A. Yes.
16 Q. The second paragraph states that: "The
17 affidavit is part of a rapidly developing spat between
18 Ribí and Hammer." Do you see that there?
19 A. Yes.
20 Q. "That has produced allegations of dangerous
21 mental instability against Ribí and defamation against
22 Hammer." Do you see that?
23 A. Uh-huh.
24 Q. Did you see this article when it was
25 published?

Page 147

1 A. I probably did, yeah.
2 Q. How did it make you feel when you were reading
3 it?
4 MR. NAYLOR: Object to the form.
5 THE WITNESS: Just more of the same.
6 Q. (BY MR. SWARTZ) Did you ask your private
7 attorney, Keith Roark, to respond to an inquiry from
8 Mountain Express to address the allegations of your
9 mental instability?
10 MR. NAYLOR: Object to the form; instruct you
11 not to answer that.
12 Q. (BY MR. SWARTZ) Mr. Roark states, at least
13 according to this article, advised -- I apologize. I
14 misstated.
15 In a letter to Mr. Donoval from your attorney
16 Mr. Roark is attributed as saying "that Mr. Ribí has
17 never been diagnosed [with] or treated for any emotional
18 or psychological illness." Do you see that in the
19 article?
20 A. Yes.
21 Q. How did that make you feel to have your
22 medical condition or lack thereof being discussed in the
23 public paper?
24 MR. NAYLOR: Object to the form.
25 THE WITNESS: Not much I can do about the

Page 148

1 paper and what they say.
2 Q. (BY MR. SWARTZ) Did you have any feelings as
3 you were reading this article?
4 MR. NAYLOR: Object to the form.
5 THE WITNESS: Not that I can remember.
6 Q. (BY MR. SWARTZ) Did it make you feel happy to
7 read it?
8 MR. NAYLOR: Objection; calls for speculation.
9 THE WITNESS: Like I say, I don't remember.
10 Q. (BY MR. SWARTZ) How about right now, does it
11 make you happy to read it?
12 MR. NAYLOR: Object to the form.
13 THE WITNESS: It's old news, none of it is
14 true, so it doesn't bother me.
15 Q. (BY MR. SWARTZ) Did it bother you at the
16 time?
17 MR. NAYLOR: Objection; calls for speculation.
18 THE WITNESS: I told you how I felt at the
19 time.
20 Q. (BY MR. SWARTZ) That you don't remember?
21 A. That's right.
22 Q. So the next significant event, as I'm seeing
23 things, following the lawsuit and your affidavit, is we
24 go into a December 2nd, 2011 executive session and city
25 council meeting. You'll find that under tab 8.

Page 149

1 Based upon your notes can you tell what was
2 discussed in the December 2nd, 2011 session?
3 A. It says: "Kirt to bring us up to date. See
4 notes."
5 Q. You are referring to Ribí 286?
6 A. Yes. It sounds like it was an update meeting.
7 Was it on the phone or -- oh, Joan Lamb was on the
8 phone. Judge's order. There must have been some update
9 on the judge's order. That was probably the response on
10 the TRO thing, I suspect. And about Donoval 12/1
11 letter. That wasn't the one we discussed earlier. Was
12 that the same letter you just talked about? I don't
13 think so.
14 MR. NAYLOR: Wait for a question.
15 THE WITNESS: Sorry.
16 MR. SWARTZ: Hold tight.
17 THE WITNESS: He asked me what we discussed.
18 MR. NAYLOR: No, he just asked you one
19 question.
20 THE WITNESS: Sorry. What was your question?
21 Q. (BY MR. SWARTZ) Looking at your notes, does
22 that help refresh your recollection on what was
23 discussed at the 12/2/2011 executive session?
24 A. Yes.
25 Q. What do you believe was discussed in that

Page 150

Page 152

1 session?

2 A. I believe we had an update from Kirt Naylor
3 on, I would assume, the Patty Ball investigation and
4 whatever legal matters were underway and some letter
5 from Jim Donoval.

6 Q. Why do you assume Mr. Naylor would be updating
7 you on the Patty Ball report?

8 A. Because that is who Mayor Willich asked us to
9 get a report from.

10 Q. Where is that written?

11 A. It's not written, but that is who he had give
12 us reports.

13 Q. Did you hear Mayor Briscoe's testimony
14 yesterday that it was not until December 13th that Mayor
15 Briscoe and Mayor Willich decided to allow Kirt Naylor
16 to become involved in the Patty Ball report?

17 MR. NAYLOR: Objection to the form; misstates
18 the testimony.

19 THE WITNESS: I believe I mentioned there were
20 nuances from timing of different meetings, of how some
21 of us recollected when things happened. This could be
22 one of those nuances.

23 Q. (BY MR. SWARTZ) Do you have a specific
24 recollection of Mayor Willich and Mayor Briscoe bringing
25 Mr. Naylor into the Patty Ball investigation prior to

1 Sage Room for the executive session. We felt that City
2 Hall meeting room was compromised and there was no
3 privacy.

4 Q. Who felt that?

5 A. The mayor and city council.

6 Q. And we've got a bunch of stuff that is
7 redacted. Do you need to see that unredacted in order
8 to recall what other subjects were discussed?

9 A. No.

10 Q. What other subjects were discussed?

11 MR. NAYLOR: Object to the extent it calls for
12 attorney-client work product privileged information,
13 instruct you not to testify as to those topics.

14 THE WITNESS: I believe I gave you my
15 recollection of the overview earlier.

16 Q. (BY MR. SWARTZ) You are now looking at a
17 December 1, 2011 letter from Mr. Donoval to Mr. Naylor
18 that is Bates No. SH-TIMELINE 243 to 246. Review that
19 and see if that is the December 1 letter that was
20 discussed in the December 2, 2011 executive session.

21 A. (Reviewing document.) I believe it probably
22 was.

23 Q. Was there some discussion about this letter or
24 were you just handed a copy of it?

25 A. As far as my notes say, we were just handed a

Page 151

Page 153

1 Mayor Willich and Mayor Briscoe reviewing the draft
2 report in Adam King's office on December 13, 2011?

3 MR. NAYLOR: Object to the form; foundation.

4 THE WITNESS: Based on the reports given to
5 city council and his involvement, yes.

6 Q. (BY MR. SWARTZ) Just by virtue of him being
7 there.

8 A. Being there and reporting at Mayor Willich's
9 request, yes.

10 Q. Where in here does it say that the mayor has
11 requested Mr. Naylor to bring everyone up to speed on
12 the Patty Ball report?

13 MR. NAYLOR: Objection; form.

14 THE WITNESS: It doesn't say it there.

15 Q. (BY MR. SWARTZ) Who all was present at the
16 December 2nd, 2011 meeting?

17 A. Joan Lamb, the mayor, DeWayne Briscoe, Bob
18 Youngman, myself, Adam King, and Kirt Naylor.

19 Q. The folks who are listed up top, is that in
20 the public session all present?

21 A. Yes, all present. And then Diane Shay, I
22 believe she was acting as the assistant clerk, so she
23 would have been there to take the roll and the minutes
24 for that first part of the meeting. That probably
25 happened at City Hall. And then we moved over to the

1 copy of it.

2 Q. Was there any discussion about renewing the
3 importance of keeping confidential what transpires in an
4 executive session after receiving this December 1, 2011
5 letter?

6 A. No.

7 Q. Anything else on your heavily redacted notes
8 that you can refer to to give us some indication of what
9 was discussed in that meeting?

10 MR. NAYLOR: Subject to my previous
11 instruction and objection.

12 THE WITNESS: No, because there was no action
13 taken at the conclusion of the meeting. So my
14 understanding is it was an update meeting.

15 Q. (BY MR. SWARTZ) At that point in time what
16 was the update on the Patty Ball report?

17 MR. NAYLOR: Same objection and instruction.

18 THE WITNESS: I can't respond to that based on
19 his instruction.

20 Q. (BY MR. SWARTZ) Well, he's saying don't share
21 communications from counsel who were providing legal
22 advice. I'm just asking for a factual update. What was
23 your understanding of where the Ball investigation was
24 at that point and where it was going?

25 A. I can answer that.

Page 154

Page 156

1 MR. NAYLOR: To the extent that that is
2 attorney-client privileged from the attorney, then I
3 will instruct you not to answer that.
4 Q. (BY MR. SWARTZ) He's not looking and I'm not
5 looking for you to reveal any legal advice you were
6 getting from an attorney.
7 A. I can report on the status of where it was at
8 that point in time.
9 Q. Okay.
10 A. And they reported to us that it was
11 progressing, that additional information had come in
12 regarding the fire department, and that was being added
13 to the investigation. And I believe that is all I can
14 say at this point without breaking attorney-client
15 privilege.
16 Q. And the attorneys present in the meeting were
17 Adam King, and there is a reference to Kirt, but there
18 is also a reference to their firm, so there could be
19 some other attorneys. Do you recall any other attorneys
20 present?
21 A. Kirt Naylor is the only one that I had on my
22 list, so I would assume there was no one else.
23 Q. And then Adam King apparently, there is
24 notations --
25 A. You asked regarding his firm.

1 Q. Just the findings or the entire report?
2 A. The entire report.
3 Q. Did that report include a section on the
4 allegations of harassment by Ms. Hammer against you?
5 A. My understanding was that report involved
6 allegations against Ms. Hammer, allegations by Ms.
7 Hammer of me, and then allegations regarding the fire
8 department, and it was all in one document.
9 At the end of the meeting I requested a copy
10 of the report regarding me. And they all agreed that I
11 could have a redacted portion regarding me, and they
12 would prepare that and get it to me. That is how they
13 ended up with the three -- Patty Ball apparently sliced
14 it into three sections; the Hammer section, the Ribi
15 section, and then the fire department section. That was
16 done five or six days later after the meeting.
17 Q. Knowing that the report included allegations
18 against you, was there any discussion about you not
19 engaging in any discussions regarding the Patty Ball
20 report?
21 A. The report was given about the allegations
22 against me, and it said that I had not engaged in any
23 violation of the harassment policy.
24 Q. So my question to you was whether there was
25 any discussion on whether you should remove yourself

Page 155

Page 157

1 Q. Thank you.
2 Following the December 2nd meeting Mr.
3 Donoval, on behalf of Ms. Hammer, filed an amended
4 verified complaint for injunctive relief, and that is
5 when he added Bob Youngman. That was on December 5th.
6 A. Okay. Thank you.
7 Q. Just to help keep us on track here.
8 MR. NAYLOR: What date did you say that was?
9 MR. SWARTZ: December 5th.
10 Q. (BY MR. SWARTZ) It looks like the next
11 meeting was on December 15th, it's tab 11.
12 A. Yes.
13 Q. And your notes are going to be under tab 29.
14 Who was in executive session on December 15th, 2011?
15 A. According to my notes, Mayor Willich, Bob
16 Youngman, DeWayne Briscoe, Joan Lamb, myself, Adam King,
17 and Kirt Naylor via phone.
18 Q. And everything is redacted and is being
19 attributed to Mr. Naylor providing legal advice. Do you
20 recall factually what transpired at the December 15th,
21 2011 meeting?
22 A. Yes.
23 Q. What is that?
24 A. That was when the report was given to the city
25 council of the findings of the Patty Ball report.

1 from the discussions about the Patty Ball report in
2 light of the fact that it concerned allegations about
3 you.
4 A. No.
5 Q. What did you recall about the findings about
6 Ms. Hammer on December 15th, 2011?
7 A. Repeat the question.
8 Q. What do you recall about Patty Ball's findings
9 about Ms. Hammer on December 15th, 2011?
10 A. It was reported that there -- my recollection
11 is that it was reported that there were findings of
12 significant potential violations of City policy and
13 possible potential criminal allegations or violations of
14 some criminal statutes.
15 Q. What was the plan for proceeding with the
16 Patty Ball investigation at that point?
17 A. I believe it was discussed at that point,
18 which was the prior understanding of the council, that
19 once the Patty Ball report was finalized and if there
20 was any potential allegations or potential criminal
21 possibilities, that it would be turned over for further
22 investigation.
23 Q. Was that the conclusion of the December 15th
24 meeting?
25 A. I believe there was discussion during that

Page 158

1 meeting that the report would be turned over for further
2 investigation, yes.
3 Q. Turned over to the prosecutor.
4 A. Yes.
5 Q. So Patty Ball was done as of December 15th,
6 the report was going to be turned over to the Blaine
7 County Prosecutor --
8 A. I don't think she was done. She had
9 additional work to do to break up the reports and then
10 provide information to whoever was doing investigations.
11 Q. So beyond dividing up the report though her
12 investigative work was done.
13 A. I wasn't involved in that part of it. That
14 was Mayor Willich and Mayor Briscoe -- Mayor Elect
15 Briscoe and Kirt Naylor, they were involved in that.
16 Council wasn't involved in any of that.
17 Q. Did you understand as of 12/15 that her report
18 was final with the exception of dividing it up into
19 three sections?
20 A. Yes.
21 Q. Was there any discussion about the termination
22 of Ms. Hammer's employment in the December 15th, 2011
23 session?
24 A. No, not that I'm aware of.
25 Q. What about the December 2nd, 2011 session?

Page 159

1 A. Not that I'm aware of, no.
2 Q. The next meeting as I can tell took place on
3 January 5th, two days after Mayor Briscoe was sworn in;
4 is that your recollection?
5 A. I believe that's correct. Executive session
6 meeting, yes.
7 Q. Prior to that meeting on December 26 -- I got
8 my date wrong on that.
9 Sometime after the December 15th or early
10 December time frame Ms. Hammer filed a complaint with
11 the Human Rights Commission. Do you have a recollection
12 of that?
13 A. Vaguely, yeah.
14 Q. And do you know what the allegations in that
15 complaint were?
16 A. I believe they were similar to the ones in the
17 other one, the other case.
18 Q. That you were harassing her?
19 A. Allegedly.
20 Q. Was there any discussion of that in the
21 December 2nd or December 15th executive session?
22 A. Not that I remember.
23 Q. Was there any discussion at any time in
24 executive session about the importance of not smearing
25 Ms. Hammer's reputation in the public record?

Page 160

1 A. I don't know that that particular subject,
2 smearing, came up.
3 Q. Not doing anything to harm her reputation by
4 making comments in the public record, anything like that
5 discussed in any of the executive sessions?
6 A. Discussions in the public record didn't come
7 up. I told you earlier that we were very careful to see
8 what we could do on November 11th and very careful to
9 see what we could do on January 19th of 2012 and how we
10 handled that.
11 Q. Did you feel like it was important not to make
12 comments about Ms. Hammer that could damage her
13 reputation?
14 A. Say that again.
15 Q. Did you place any importance on refraining
16 from making comments about Ms. Hammer that could damage
17 her reputation?
18 A. I don't think we looked at -- or I can't speak
19 for anybody else.
20 Q. I'm just asking about you.
21 A. My only comments were related to defense of
22 myself, based on what was said about me.
23 Q. Did you have any concern for Sharon Hammer's
24 reputation?
25 A. I was very careful whenever I said something

Page 161

1 in public. I chose my words very carefully.
2 Q. Was it because you were concerned about Sharon
3 Hammer's reputation?
4 A. Yes.
5 Q. Turning to your notes under tab 30 of the
6 black binder, it's the January 5th, 2012 executive
7 session. Do you see those there?
8 A. Yes.
9 Q. It looks like it's just a single page, 299.
10 A. That's what it is.
11 Q. Right?
12 A. Yes.
13 Q. Can you recall what was discussed at the
14 January 5th, 2012 executive session based upon your
15 notes?
16 MR. NAYLOR: Subject to the same instruction
17 and objection, calling for attorney-client privileged or
18 work product information.
19 THE WITNESS: The only thing I recollect from
20 that meeting is this was the first meeting we had with
21 the two newly elected council members, Michelle Griffith
22 and Franz Suhadolnik. My recollection is this was their
23 very first executive session, so it was most likely an
24 update on legal matters and personnel matters. I don't
25 know if there was any action taken after that meeting.

Page 162

1 I don't have minutes of the meetings.
2 Q. (BY MR. SWARTZ) you'll find the minutes under
3 tab 16.
4 A. It doesn't look like there was any action
5 taken as a result of the executive session.
6 Q. Do you recall what was discussed, or you just
7 can't tell with everything redacted?
8 MR. NAYLOR: Same objection.
9 THE WITNESS: Same answer as I gave earlier.
10 Q. (BY MR. SWARTZ) Just an update?
11 A. Yes.
12 Q. An update on what?
13 A. As I said earlier, legal matters, I suspect,
14 and personnel matters.
15 Q. Did those personnel matters involve Sharon
16 Hammer?
17 MR. NAYLOR: Object; same objection and
18 instruction.
19 THE WITNESS: They may have.
20 Q. (BY MR. SWARTZ) Did the legal matters involve
21 Sharon Hammer?
22 A. They may have.
23 Q. Were there any other legal matters pending
24 against the City or any of the city council members on
25 January 5th, 2012 that you are aware of?

Page 163

1 MR. NAYLOR: Object to the form; same
2 instruction and objection.
3 THE WITNESS: There may have.
4 Q. (BY MR. SWARTZ) You don't recall?
5 A. I don't recall.
6 Q. Do you recall discussing the termination of
7 Ms. Hammer's employment on January 5th, 2010?
8 A. I don't remember discussing that at that
9 meeting, no.
10 Q. When do you first remember discussing the
11 termination of Ms. Hammer's employment? Other than
12 November 11th of 2011, I guess, what is the next time?
13 A. I received a phone call from Mayor Briscoe, I
14 believe either the day before January 19th or the
15 morning of January 19th, I'm not sure which day it was,
16 where he indicated to me his desire to end her contract.
17 And he told me that he wanted to do it without cause,
18 and he asked for my support of that on the meeting on
19 January, I believe it was the 19th.
20 Q. You believe he called you the same day as that
21 meeting?
22 A. Or the day before. I cannot remember when
23 that was.
24 Q. What did you say in response to Mayor Briscoe?
25 A. I told him that I would support whatever

Page 164

1 decision he made.
2 Q. Was there any hesitation on your part in
3 response to his request for your support?
4 A. No. Whatever the mayor -- the city
5 administrator works for the mayor, so whatever he wanted
6 I would support.
7 Q. Did he discuss with you why he wanted to
8 terminate Ms. Hammer without cause?
9 A. Yes.
10 Q. What did he state?
11 A. He told me that he needed to have a city
12 administrator that he chose and could work with, and I
13 agreed with him. And I said to him that the previous
14 three mayors, who I had served under each, had chosen
15 their own city administrators. So that was very
16 consistent with what I had seen in the past.
17 Q. Did he explain to you why he believed he could
18 not work with Ms. Hammer?
19 A. He didn't go into any details at that point.
20 Q. Did you ask?
21 A. No.
22 Q. Did you need to ask in light of everything
23 that had transpired from November 11th to the day of
24 that phone call?
25 MR. NAYLOR: Object to the form.

Page 165

1 THE WITNESS: That wasn't part of the thinking
2 process.
3 Q. (BY MR. SWARTZ) You didn't think at all other
4 than state, I'll support you, Mayor; right?
5 A. Yeah. It's what the mayor wanted, so I
6 supported what the mayor wanted.
7 Q. Is that why you voted to terminate Ms.
8 Hammer's employment?
9 A. We voted to approve the decision of the mayor.
10 Q. At that time you had a pending lawsuit against
11 Ms. Hammer, Mr. Donoval that was filed on December 30th;
12 right?
13 A. Correct.
14 Q. You were seeking monetary damages in that
15 lawsuit?
16 A. Correct.
17 Q. Did you think at all that by participating in
18 the discussions about the termination of Ms. Hammer's
19 employment that you might have a conflict and you should
20 recuse yourself?
21 MR. NAYLOR: Object to the form.
22 THE WITNESS: No.
23 Q. (BY MR. SWARTZ) Why didn't you perceive there
24 would be a conflict?
25 A. I didn't perceive a conflict. My attorney

Page 166

1 didn't perceive a conflict. Council members didn't
2 perceive a conflict, no one did.
3 Q. You know that the council did not perceive a
4 conflict because that was discussed?
5 A. They never raised that issue with me.
6 Q. Did you raise that issue with them as there
7 being a potential conflict and ask for them to weigh in
8 on it?
9 A. They had every opportunity to.
10 Q. I asked you whether you raised it.
11 A. No.
12 Q. Did you raise it with anyone else?
13 A. No.
14 Q. It looks like the next meeting was on January
15 10th, another special meeting. What happened on January
16 10th?
17 A. This is the long meeting. This was a meeting
18 where Patty Ball came to Sun Valley to give her report
19 to the city council, in particular the two new members
20 who had never seen the report or heard the report. And
21 I believe it was because Michelle Griffith and Franz
22 Suhadolnik wanted to hear firsthand from her and be able
23 to ask her questions about her findings.
24 Q. Were they the same findings that you were
25 presented with on December 15th, 2011?

Page 167

1 A. Yes.
2 Q. So this was old news to you.
3 A. Yes.
4 Q. What else do you recall about the January
5 10th, 2012 session?
6 A. That's it, as far as I can remember. It was a
7 long meeting and a lot of question and answer.
8 Q. Do you recall what the questions were?
9 A. Mostly the questions were coming from Michelle
10 Griffith and Franz to Patty Ball.
11 Q. Do you recall what the questions were?
12 A. I don't recall the specific questions, no.
13 Q. Did you engage in any discussion during the
14 January 10th, 2012 meeting or did you just listen?
15 A. I may have had questions too, but it was
16 primarily them.
17 Q. Do you recall what the plan for proceeding was
18 at the conclusion of the January 10th, 2012 session?
19 MR. NAYLOR: Same objection and instruction.
20 THE WITNESS: As you can see, there was no
21 action taken at the end of that meeting.
22 MR. NAYLOR: Hang on a second, Eric. I need
23 to call my office really quick and confirm something
24 about these documents here.
25 MR. SWARTZ: The replacement documents?

Page 168

1 MR. NAYLOR: Yeah.
2 MR. SWARTZ: We'll go off the record and allow
3 you to do that.
4 (Recess taken.)
5 Q. (BY MR. SWARTZ) Mr. Ribí, I believe you said
6 it was decided that at the December 15, 2011 meeting
7 that the report would be turned over to the Blaine
8 County Prosecutor.
9 A. There was discussion that it could be sent to
10 the Blaine County Prosecutor, yes.
11 Q. Which of the three reports?
12 A. I believe it was the one that had criminal
13 allegations in it.
14 Q. Against?
15 A. Ms. Hammer.
16 Q. What about the allegations regarding the fire
17 department, was that going to be turned over to the
18 Blaine County Prosecutor as of that meeting?
19 A. I don't recall about that one.
20 Q. We covered the January 10th session. The next
21 meeting was then on the 19th, that was the meeting where
22 it was decided to terminate Ms. Hammer's employment;
23 correct?
24 A. That is where we ended her contract, yes.
25 Q. I didn't see any notes from you on that. Do

Page 169

1 you recall whether you took any?
2 A. I believe I did. I don't know whether...
3 Q. Maybe I didn't recognize them because they
4 are -- let's try 24.
5 A. That's one of them, yes.
6 Q. That's Ribí 260 through 271; is that right?
7 A. Yes.
8 Q. It looks like on Ribí 261 you go into an
9 executive session, it's Mayor Briscoe, yourself,
10 Mr. Youngman, Mr. Suhadolnik, Ms. Griffith, Adam King,
11 and Mr. Naylor was participating by phone; is that
12 right?
13 A. Yes.
14 Q. Do you recall what was discussed in executive
15 session on January 19th?
16 MR. NAYLOR: I'll give you the same
17 instruction and objection as to the extent it relates to
18 any attorney-client privileged work product
19 communications.
20 THE WITNESS: I believe we discussed Mayor
21 Briscoe's request or decision to end the city
22 administrator's contract, and then attached I think are
23 some materials that I believe we had at that executive
24 session.
25 Q. (BY MR. SWARTZ) Do you recall who provided

Page 170

1 the materials?
2 A. I'm not sure. I don't remember.
3 Q. You've got Idaho Code 50-204 and your notes
4 state --
5 A. The first one is some minutes of May 15th,
6 2008 I believe where we approved the appointment of her
7 as the city administrator. I'm sorry, I didn't mean to
8 interrupt you.
9 Q. That's okay. Then you have got a copy of
10 Idaho Code 50-204 and a notation that says: "City
11 administrator not designated by resolution or
12 ordinance."
13 A. And I believe in the copy I had the line "and
14 such other officers as designated by the council" was
15 highlighted.
16 Q. Were you trying to determine the proper
17 procedure for terminating her employment by looking
18 at --
19 A. I think that might have been why that was
20 there.
21 Q. You've got the May 15, 2008 meeting minutes
22 that says she's an appointed officer, then you are
23 looking at the statute that tells you how to deal with
24 appointed officers; right?
25 A. Right.

Page 171

1 Q. And then you have a copy of Ms. Hammer's
2 contract?
3 A. That is correct.
4 Q. So since this wasn't copied in color there may
5 be some highlighting on the contract as well?
6 A. I don't recall that.
7 Q. What was the purpose of having a copy of
8 Ms. Hammer's contract?
9 A. I suspect to discuss the terms of the
10 contract.
11 Q. Was there any discussion about terminating
12 Ms. Hammer with cause?
13 A. Not that I recall.
14 Q. I realize that Mayor Briscoe did not elaborate
15 with you the on the phone when he spoke to you on either
16 the 18th or the 19th about why he couldn't work with Ms.
17 Hammer. But do you recall whether he elaborated on his
18 inability to work with Ms. Hammer during the January
19 19th, 2012 executive session?
20 A. I believe he gave a few reasons.
21 Q. What do you recall?
22 A. From what I recall, and I didn't write down
23 any notes or any reasons, but to the best of my
24 recollection, it related to the fact that he had
25 experiences with her from when he became mayor up until

Page 172

1 that time and determined that it was hard for him to
2 work with her and that he wanted to choose his own city
3 administrator, and that his management style was
4 different than the management style that the previous
5 administration had operated under, and that he wanted to
6 have a city administrator that would work under his
7 management style. Those were the three reasons that I
8 recollect.
9 Q. Did any of the council members ask him to
10 elaborate on any of the reasons why he was wanting to
11 terminate Ms. Hammer's employment?
12 A. Not that I recollect.
13 Q. Why did you personally vote to support the
14 termination of Ms. Hammer's employment?
15 A. Because that is what the mayor wanted.
16 Q. Do you know if Mr. Naylor was present by phone
17 for the entire January 19th meeting?
18 A. To the best of my knowledge, yes.
19 Q. And Adam King was present for the entire
20 meeting?
21 A. To the best of my knowledge.
22 Q. Do you recall taking any precautions when
23 turning over the Patty Ball report to the Blaine County
24 Prosecutor to ensure that it wouldn't become a public
25 document?

Page 173

1 MR. NAYLOR: Object to the form; foundation.
2 THE WITNESS: That was not my obligation. I
3 had nothing to do with that.
4 Q. (BY MR. SWARTZ) Did you ever disclose the
5 Patty Ball report in any manner into the public forum?
6 A. Which Patty Ball report?
7 Q. Any of them.
8 A. I disclosed one line of the Patty Ball report
9 regarding me publicly, yes.
10 Q. Anything else?
11 A. No.
12 Q. Now, throughout your term as a city council
13 member you maintained a blog online; correct?
14 A. Yes.
15 Q. And you commented numerous times on your blog
16 regarding Sharon Hammer; isn't that correct?
17 A. I would not call it commenting. I posted blog
18 posts that included copies of press releases or links to
19 stories with introductions explaining what it was in
20 most cases.
21 Q. Why were you doing that?
22 A. To inform the citizens about what was going
23 on.
24 Q. At any point in time did anyone ask you to
25 stop posting on your blog regarding Ms. Hammer?

Page 174

1 A. No.
2 Q. Did you ever refuse someone's request that you
3 back off on your posting about Ms. Hammer?
4 A. No one made a request like that. Unless there
5 was something written in one of the voluminous documents
6 that maybe Mr. Donoval or Ms. Hammer had written, but
7 other than that there was no request.
8 Q. I can tell you when I first was hired as
9 counsel, I contacted Mr. Naylor and was trying to
10 engender an environment where settlement discussions
11 could take place. And one of the items that he and I
12 discussed was having you stop posting on your blog
13 regarding Ms. Hammer, and I was advised by him that you
14 would not agree to do that. Do you have any
15 recollection of telling --
16 A. Now that you mention that, yeah, from the
17 legal part of it there was that. And I actually did
18 take my blog down as a courtesy temporarily to show good
19 faith, but there was no good faith that came back the
20 other way.
21 Q. That you received?
22 A. Correct.
23 Q. What do you mean by there was no good faith
24 coming back the other way?
25 A. Mr. Donoval continued to post very negative

Page 175

1 comments about me in the Idaho Mountain Express.
2 Q. In response to that then did you fire back up
3 your blog?
4 MR. NAYLOR: Object to the form.
5 THE WITNESS: You don't say "fire back up."
6 It was just there.
7 Q. (BY MR. SWARTZ) You made it live again.
8 A. Yes. It's not live any more. Since I'm no
9 longer a council member, it's not there any more.
10 Q. Did you review a copy of the forensic audit
11 when it was issued?
12 A. When it was issued?
13 Q. Released. Did you ever see a copy of the
14 forensic audit?
15 A. I have seen a copy of it.
16 Q. Do you recall seeing any expenditure in the
17 forensic audit that was determined to be improper
18 attributed to Ms. Hammer that was not approved by the
19 city council?
20 A. I believe there were a large number of
21 expenditures in there that were weren't approved by the
22 city council.
23 Q. Can you recall any as you sit here today?
24 A. I can't give you specific ones.
25 Q. So you believe it identifies expenditures that

Page 176

1 the city council had no knowledge, no prior knowledge
2 of.
3 A. Correct.
4 Q. Did you see any expenditures in there that you
5 believed the treasurer had no prior knowledge of?
6 A. I'm not aware of that. I couldn't comment on
7 that.
8 Q. Did you see any expenditures in there that you
9 believed the mayor wasn't aware of?
10 A. I couldn't comment on that.
11 Q. Were you still around when Kelly Ek filed her
12 tort claim against the City?
13 A. Still around?
14 Q. Still sitting as a city council member?
15 A. Yes.
16 Q. Do you recall Kelly Ek filing a tort claim
17 against the City?
18 A. We were made aware of that, yes, after it was
19 filed.
20 Q. Did you review it?
21 A. Yes, I read it.
22 Q. Did you find it to be a credible claim?
23 MR. NAYLOR: Object to the form.
24 THE WITNESS: My understanding is it had
25 merit, yes.

Page 177

1 Q. (BY MR. SWARTZ) Did you have any involvement
2 in the decision about what to do with the claim?
3 A. No.
4 Q. How about Michelle Frostenson's tort claim,
5 were you still city council member when that came in?
6 A. Yes.
7 Q. Did you have any involvement in the decision
8 about what to do with that claim?
9 A. No.
10 Q. Did you find her claim to have merit?
11 A. I believed it did have some merit, yes.
12 Q. Did you ever see the settlement agreement
13 related to either Ms. Ek or Ms. Frostenson's tort claim?
14 A. No.
15 Q. Would it surprise you if it included terms
16 that stated that the claims were doubtful?
17 A. I couldn't comment on what it said. I have no
18 idea.
19 Q. Do you recall why you lent your car to Mayor
20 Briscoe?
21 A. Lent my car to Mayor Briscoe? Are you
22 referring to the question you asked yesterday?
23 Q. Yeah. I asked Mayor Briscoe whether he had
24 ever borrowed one of your cars and he stated that he had
25 and he just couldn't recall why.

Page 178

Page 180

1 A. I thought about that a little bit. He asked
2 me -- I had an extra car, an old Land Cruiser, and he
3 asked me sometime, a number of years ago, I can't even
4 remember how far back, but it was probably after he
5 became a councilman, if I could loan him my car for a
6 while.

7 It was in the winter, I know. And I don't
8 remember exactly why, whether he was having other car
9 problems or something. And I just said, Sure, you can
10 borrow my car. I've have loaned my car to other people
11 too. And yeah, I loaned it to him.

12 Q. You don't remember why?

13 A. No. He needed it for some reason. I believe
14 he may have had car troubles. I'm not sure, but it was
15 in the winter.

16 Q. You believe he may have had car troubles. Are
17 you just guessing or is that what he told you?

18 A. I'm guessing because I don't remember. It was
19 a number of years ago.

20 Q. Do you recall how long he was borrowing your
21 car?

22 A. I think he used it for several weeks.

23 Q. Did he tell you anything when he was done with
24 it? He said, I'm done with it, I don't need it any
25 more, anything like that, or he just returned it?

1 A. Potentially, potential allegations of
2 criminal.

3 Q. Or allegations of potential criminal conduct.

4 A. Yes. I think it said something else, criminal
5 or civil or something like that. That's all I was aware
6 of.

7 Q. Since terminating Ms. Hammer's employment,
8 have you come to know anything different?

9 A. I have read the County Prosecutor's report.
10 I've read the HSNO report. I've read the attorney
11 general's report. And they all have confirmed what the
12 Patty Ball report has said, and even expanded on it,
13 yes.

14 Q. Anything else?

15 A. I think that's it.

16 MR. SWARTZ: Kirt, are you going to have any
17 follow up?

18 MR. NAYLOR: No.

19 MR. SWARTZ: Let's take a quick break.
20 (Recess taken.)

21 MR. SWARTZ: I don't have anything further,
22 Mr. Ribí. Thank you for your time.

23 MR. NAYLOR: We'll read and sign.
24 (Deposition concluded at 5:02 p.m.)
25 (Signature requested.)

Page 179

Page 181

1 A. Yeah, he returned it.

2 Q. He didn't explain to you why he didn't need it
3 any longer?

4 A. No.

5 Q. Number 20, this is the paid advertisement that
6 we spent some time talking with Mayor Briscoe about
7 yesterday, Hammer 327. Did you have any involvement in
8 preparing that advertisement before it was placed in the
9 Mountain Express?

10 A. No.

11 Q. At the time that you voted to terminate Ms.
12 Hammer's employment, what acts of misconduct that she
13 had engaged in were you aware of?

14 MR. NAYLOR: Object to the form.

15 THE WITNESS: The only thing I was aware of
16 was what Patty Ball had reported in her report.

17 Q. (BY MR. SWARTZ) Reported in her report that
18 you received on December 15th, 2011?

19 A. Yes, and then also reported -- yeah, that was
20 that report, and then she said the same thing again at
21 that January 10th meeting.

22 Q. And if I recall your testimony correctly, she
23 identified serious violations of City policy and she
24 identified conduct that could have been criminal in
25 nature.

1 CERTIFICATE OF WITNESS

2 I, NILS A. RIBI, being first duly sworn, depose
3 and say:

4 That I am the witness named in the foregoing
5 deposition, consisting of pages 1 through 183; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct, except for any changes that I may have listed
10 on the Change Sheet attached hereto:

11 DATED this _____ day of _____, 20____.

12
13
14
15 NILS A. RIBI

16
17 SUBSCRIBED AND SWORN to before me this _____ day
18 of _____, 20____.

19
20
21 NAME OF NOTARY PUBLIC

22 NOTARY PUBLIC FOR _____

23 RESIDING AT _____

24 MY COMMISSION EXPIRES _____
25

Page 182

ERRATA SHEET FOR NILS A. RIBI

1
2 Page ____ Line ____ Reason for Change ____
3 Reads ____
4 Should read ____
5
6 Page ____ Line ____ Reason for Change ____
7 Reads ____
8 Should read ____
9
10 Page ____ Line ____ Reason for Change ____
11 Reads ____
12 Should read ____
13
14 Page ____ Line ____ Reason for Change ____
15 Reads ____
16 Should read ____
17
18 Page ____ Line ____ Reason for Change ____
19 Reads ____
20 Should read ____
21
22 Page ____ Line ____ Reason for Change ____
23 Reads ____
24 Should read ____
25 You may use another sheet if you need more room.
26 WITNESS SIGNATURE ____

Page 183

REPORTER'S CERTIFICATE

1
2 I, BEVERLY BENJAMIN CSR No. 710, Certified
3 Shorthand Reporter, certify: That the foregoing
4 proceedings were taken before me at the time and place
5 therein set forth, at which time the witness was put
6 under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 10th day of June 2014.
17
18
19
20
21 BEVERLY A. BENJAMIN, CSR No. 710
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 28, 2019

EXHIBIT 27
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 27
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
Plaintiffs,)
vs.) Case No.
CITY OF SUN VALLEY; NILS RIBI, in his) 1:13-CV-211-EJL
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
Defendants.)
_____)

DEPOSITION OF ROBERT YOUNGMAN

MAY 20, 2014

REPORTED BY:

DIANA KILPATRICK, CSR No. 727, RPR

Notary Public

Page 2

Page 4

THE DEPOSITION OF ROBERT YOUNGMAN was taken on behalf of the Plaintiffs at the Office Club, 160 Second Street West, Ketchum, Idaho, commencing at 9:00 a.m. on May 20, 2014, before Diana Kilpatrick, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For Plaintiffs:

Jones & Swartz, PLLC
BY MR. ERIC B. SWARTZ
P.O. Box 7808
Boise, Idaho 83707-7808

For Defendants:

Naylor & Hales, P.C.
BY MR. KIRTLAN G. NAYLOR
950 West Bannock Street, Suite 610
Boise, Idaho 83702-6103

ALSO PRESENT:

Dewayne Briscoe
Nils Ribi

ROBERT YOUNGMAN,
first duly sworn to tell the truth relating to said cause, testified as follows:

EXAMINATION

QUESTIONS BY MR. SWARTZ:

Q. Please state your legal name.

A. Robert Alan Youngman, one L.

Q. Mr. Youngman, you understand that you have just been administered and accepted the oath?

A. (Inaudible Response.)

Q. Is that a yes? You're nodding your head yes.

A. Yes.

Q. And do you understand that in accepting the oath and giving the testimony that you're going to give here today, your testimony carries the same weight as testimony that you would give in a court of law?

A. Yes.

Q. You are here pursuant to a subpoena that was issued in a lawsuit that's been brought by Sharon Hammer. I'm handing a copy of that subpoena to you. Have you seen that before today?

A. Yes. In electronic form, yes.

Q. And did you understand that it was requesting that you bring documents with you?

Page 3

Page 5

I N D E X

TESTIMONY OF ROBERT YOUNGMAN	PAGE
Examination By Mr. Swartz	4
Examination By Mr. Naylor	86

E X H I B I T S

NO.	DESCRIPTION	PAGE
1 -	Mr. Youngman's handwritten notes	31

A. Yes.

Q. And did you bring any documents with you today?

A. Yeah. I have my notes.

MR. NAYLOR: And I have a copy of those notes that are responsive to the subpoena there.

MR. SWARTZ: Do you have a copy for Mr. Youngman as well?

MR. NAYLOR: No.

THE WITNESS: I have the notebook. I have a -- he's in possession of the notebook right now, but it's my notebook.

MR. NAYLOR: That is a redacted copy with the attorney-client privileged materials redacted, and we can do a privilege log at a later time.

BY MR. SWARTZ:

Q. Other than these ten pages of notes that you've produced today, did you come across any other materials that were responsive to the subpoena?

A. Not that I am aware of. I mean, as you know, I would be in possession of copies of the lawsuits, but I figured, Why bring a box of stuff you already have? Other than that, I don't have anything.

Q. Copies of lawsuits and your notes?

A. Yes.

Page 6

1 Q. That's all you have?
2 A. That's the extent of what I have, and these
3 are the extent of the notes.
4 Q. Okay. You are entitled to a witness fee,
5 and that was not issued along with the subpoena, but I
6 brought a check today, so there's your \$40 witness fee.
7 That will buy you lunch, maybe. Have you ever had your
8 deposition taken before, Mr. Youngman?
9 A. No.
10 Q. A couple of helpful hints for you and I and
11 our court reporter Diana to make the most accurate
12 transcript possible, would be to answer audibly, so yes,
13 no, or a narrative, as the question may require. No
14 head shakes, uh-huhs or huh-uhs. Is that fair?
15 A. Sure.
16 Q. Another helpful hint is to allow me to
17 finish my question before you begin your answer, and
18 I'll certainly endeavor to allow you to finish your
19 answer before I begin my next question. Okay.
20 A. Okay.
21 Q. That way we're not talking over one another.
22 If I ask a question that you don't understand, please
23 stop me and ask me to rephrase it or state it another
24 way.
25 A. (Inaudible Response.)

Page 7

1 Q. Is that a yes?
2 A. Yes. Sorry. I'll get used to this.
3 Q. No problem. If you do answer my question,
4 it will be understood that you understood the question.
5 Okay?
6 A. Yes.
7 Q. If during your deposition today you realize
8 that something you said was inaccurate or needs to be
9 clarified, go ahead and stop me and we can get that
10 corrected on the record today. Okay?
11 A. Yes.
12 Q. If I ask a question that you don't know the
13 answer to, by all means simply say that you don't know.
14 I'm not looking for your best guess. I'm just looking
15 for your personal knowledge. Okay?
16 A. Yes.
17 Q. Do you understand that Mr. Naylor represents
18 the City of Sun Valley, Mr. Briscoe and Mr. Ribí in the
19 lawsuits that are currently being brought by Sharon
20 Hammer and James Donoval?
21 A. Yes.
22 Q. Do you understand that you have the right to
23 have your own private attorney present for this
24 deposition?
25 A. Yes.

Page 8

1 Q. Do you have any desire to stop the
2 deposition, reschedule for another day, for when you can
3 have your own counsel present?
4 A. Not at this time.
5 Q. If that time arises during your deposition
6 today, go ahead and stop me. I want to make sure that
7 you understand that you've got that right so that we can
8 get the deposition done without you saying, Wait a
9 minute, I didn't know I had the right to counsel.
10 A. Yes. Let me clarify that my understanding
11 is that I am a -- essentially a part of the City, as it
12 concerns what we're doing today, and the City is
13 represented by Mr. Naylor, and therefore it was not
14 my -- I had no reason to bring my own lawyer separate
15 from the City, because all of my actions are as a city
16 council person, which is encompassed by the City.
17 Q. If that's your understanding.
18 A. I just want to clarify my understanding.
19 Q. I just want to make sure that you understand
20 that you have the right to have your own private
21 counsel.
22 A. Yes.
23 Q. Okay. Did you do anything to prepare for
24 your deposition today?
25 A. Mr. Naylor and I met.

Page 9

1 Q. And I don't want to know what you and
2 Mr. Naylor spoke about. Did you have a chance to review
3 any materials?
4 A. We reviewed our notes, or my notes, that you
5 have a copy of there.
6 Q. Did you review anything else?
7 A. Everything that we reviewed came out of the
8 notes.
9 Q. So these ten pages are what you reviewed?
10 A. Essentially, yes.
11 Q. Essentially, does that mean yes?
12 A. Yes. Everything derives from the notes. It
13 was basically a chronological procedure, the notes are
14 in chronological order.
15 MR. NAYLOR: Bob, he's not asking what you
16 discussed. He's just asking what documents you looked
17 at.
18 THE WITNESS: We only looked at the notes.
19 That's all we had.
20 BY MR. SWARTZ:
21 Q. Are you currently a city council member?
22 A. No.
23 Q. When did your tenure end?
24 A. I think the 3rd of January, 2014, whenever
25 the first counsel meeting was for the year.

Page 10

1 Q. When did you first sit as a city council
2 member?

3 A. Approximately the same, 2010, early January
4 of 2010.

5 Q. In January of 2010, up until the fall of
6 2011, what was your understanding of how City expenses
7 were approved?

8 A. We had a system in place that was there when
9 I arrived that involved city council meeting approval of
10 expenses, and prior to that approval by the city council
11 on a monthly basis, one of the four city council members
12 was to review what were called the yellow sheets, and
13 the yellow sheets were to be -- my understanding was
14 there were a comprehensive collection of all the
15 expenses of the City, and that it was accepted that one
16 council member would go through them, and if there were
17 any issues, they would be brought forward prior to the
18 meeting, and hopefully be resolved prior to the meeting,
19 and when we got to the meeting, it was straightforward.
20 A council member had reviewed them, therefore they were
21 recommended for approval.

22 That system was, in my recollection,
23 somewhat amorphous in the sense that there wasn't a
24 strict rotation of the review of those. It was very
25 casual. They would appear in your mailbox, and if you

Page 11

1 happened to be in town, you would obviously review them,
2 because you realized it was your turn, but if you
3 weren't in town, they would sit there, and from what I
4 understand, someone would realize they'd been sitting
5 there, and as a consequence that person hasn't addressed
6 them, so we need to push them into another council
7 person's mailbox. So from time to time, you would get
8 yellow sheets in your box more often than quarterly. It
9 was somewhat, I wouldn't say informal, but it was an
10 operational procedure that seemed to work.

11 Q. Ultimately whose responsibility was it to
12 approve City expenses?

13 MR. NAYLOR: Object to the form. Calls for
14 a legal conclusion.

15 BY MR. SWARTZ:

16 Q. As you understood it as a city council
17 member.

18 A. I think that the statutes say that the city
19 council will approve the expenses at the meeting, and if
20 they have any issue they would want to have it resolved.

21 Q. At any point during your term as a city
22 council member, did the city council decide that they
23 were going to preapprove the payment of credit card
24 expenditures?

25 A. Not during my term.

Page 12

1 Q. Are you aware of that happening in your
2 term?

3 A. Not credit card, no.

4 Q. Was there an expense that was preapproved
5 during your term?

6 A. Sometime in early 2012, maybe March or
7 April, 2012, we switched to a new system that ferreted
8 out all of those expenses that were recurring, such as
9 power and electric bills, and put them into a separate
10 category that were essentially preapproved, and that
11 everything else would then be approved on a review
12 basis, and I think that's still in place today. There's
13 a set of recurring bills that are essentially
14 preapproved, finally approved, officially approved in
15 the council meeting, and then a set that are reviewed by
16 what's called a finance committee prior, the Monday
17 prior to the council meeting, and that committee
18 recommends to the rest of the council that those
19 expenses are approved and not approved, and if there are
20 issues they bring them up and try to resolve them during
21 the meeting so they can be approved and get vendors
22 paid.

23 Q. Was the finance committee only reviewing the
24 recurring charges?

25 A. No. All of the charges. They would also

Page 13

1 take a look at the recurring ones and make sure there
2 wasn't something funny in there, but since they're
3 recurring, it's not something that justified a detailed
4 review like some of the other ones do.

5 Q. So let's rewind a little bit. When I was
6 asking you about how City expenses were approved from
7 2010 to 2011, you had indicated that a city council
8 member would review a yellow sheet, and then once the
9 meeting was called, it was brought up to the entire
10 council for approval. Was there not a finance
11 committee?

12 A. No. There was no finance committee. It was
13 just that quarterly duty shifting from one council
14 person to another.

15 Q. And in March, April of 2012, the finance
16 committee came on board?

17 A. Was created, yes.

18 Q. Would the finance committee take --
19 essentially take the place of the council member
20 reviewing the yellow sheets?

21 A. Yes. Although all council members had the
22 materials available to them if they wanted to review
23 them. That was part of setting up the committee.

24 Q. What was your understanding of the city
25 treasurer's duties?

Page 14

1 A. Accurate accounting of the City's finances,
2 I think, just to put it in simple terms.
3 Q. Did the city treasurer have any role in
4 reviewing expenditures and confirming that they were
5 legitimate?
6 MR. NAYLOR: Object to the form to the
7 extent it calls for a legal conclusion.
8 THE WITNESS: I can only say that I know
9 what I personally did --
10 BY MR. SWARTZ:
11 Q. Of course.
12 A. -- in interacting with the treasurer. If I
13 found an issue in the yellow sheets, would take it to
14 the treasurer and ask it to be resolved. What the
15 treasurer then did I don't recall. There wasn't a
16 closed loop on that. I would often submit a concern,
17 and never really hear a definitive answer back as to
18 what the deal was with that particular expense.
19 Q. You would raise the concern to the
20 treasurer, and not necessarily hear back a definitive
21 response?
22 A. Yes. Right.
23 Q. And by the time the city council meeting was
24 called, would that expenditure then be raised for
25 approval?

Page 15

1 A. That expenditure would be part of the
2 package, and from time to time, if it was a substantial
3 one -- a lot of these things are tiny -- I would ask
4 during the council meeting what the resolution was. But
5 there was no official closed loop, is what I'm saying.
6 So that we can close the loop, there was no official one
7 at the time. So there was no way to go from the yellow
8 sheet to a concern to its submission to the
9 administration, to an answer back to the council. It
10 was more -- more of an informal kind of process.
11 Q. Can you recall ever voting not to approve an
12 expense?
13 A. No. No. That I recall.
14 Q. Every expense that was submitted while you
15 were on the council, as best you can recall, you
16 approved?
17 A. As best I can recall. There was nothing of
18 any major amount that didn't get approved. I just don't
19 remember not approving.
20 Q. Does an approval of an expense occur by
21 unanimous vote or a majority vote of the council, or
22 some other mechanism?
23 A. My understanding is it's majority.
24 Q. And there are four sitting members?
25 A. (Inaudible Response.)

Page 16

1 Q. Is that a yes?
2 A. Yes.
3 Q. Can you recall an instance where any member
4 of the council voted not to approve an expenditure?
5 A. I have to remember two councils, because
6 there were two sets of people. As far as the regular
7 expenses of the City, my recollection is that they were
8 always resolved during the meeting. Other expenditures,
9 such as funding of organizations, there were plenty of
10 objections along the way, and votes against funding
11 certain things. But the expenses of the City generally,
12 my recollection is they were always eventually approved
13 after resolution of any concern.
14 Q. Who presented the packet of expenses to the
15 city council during the meetings?
16 A. Typically the treasurer. The treasurer was
17 present, and if the treasurer wasn't present, the
18 administrator.
19 Q. And do you have an understanding that part
20 of the treasurer's job was to present those as proper
21 expenses of the City to the city council for approval?
22 MR. NAYLOR: Object to the form to the
23 extent it calls for a legal conclusion.
24 THE WITNESS: I don't know what you mean by
25 proper.

Page 17

1 BY MR. SWARTZ:
2 Q. Appropriate, legitimate.
3 MR. NAYLOR: Same objection.
4 THE WITNESS: My understanding is that the
5 treasurer is to present the finances of the City
6 accurately.
7 BY MR. SWARTZ:
8 Q. Do you recall an instance when you were
9 sitting on the on the council where the city treasurer
10 did not present a finance -- financial picture of the
11 City that was not accurate?
12 MR. NAYLOR: Object to the form.
13 THE WITNESS: I think that from time to time
14 there were small arithmetic errors that were brought
15 forward, that were then obviously in the minutes and
16 corrected, but once those were resolved, then it was
17 approved, so I was not aware that there would be any
18 inaccurate representations that would have been
19 approved. We, of course, could have mistakes and not
20 seen the things that may have been there, but that's why
21 you have an auditor.
22 BY MR. SWARTZ:
23 Q. Did the city council approve payroll
24 expenses?
25 A. Not directly. We approved the budget. My

Page 18

Page 20

1 understanding, the council approves the budget,
2 essentially giving the mayor the authority to administer
3 the City. The statutes refer to the mayor as the chief
4 administrative officer, and I've been informed by the
5 Idaho Association of Cities council that the mayor is to
6 be considered a chief executive officer with executive
7 power, and with the budget, provided that the mayor
8 stays within said budget, that they have some level of
9 latitude to administer that budget.

10 So the payroll comes under the
11 administration. As long as it's within budget, we, as a
12 council person, have no authority, and the -- if it was
13 out of budget -- which from time to time we would have,
14 say, volunteer firemen on a monthly basis, because there
15 was a fire, we're out of budget, and would give a
16 reason, because it's all there in our financial
17 statement -- and say, Fine, it's all there, and move on.

18 Q. Would the degree of latitude as the chief
19 operating officer that the mayor had, would that allow
20 him to enter into employment contracts with, for
21 example, Sharon Hammer?

22 MR. NAYLOR: Object to the form to the
23 extent it calls for a legal conclusion.

24 THE WITNESS: You know, as Mr. Naylor is
25 stating, there may be some fine detail that I have no

1 administrator?

2 A. No.

3 Q. What was your understanding of what the city
4 administrator's job was?

5 A. My expectations were to manage the City,
6 assist the mayor in managing the City.

7 Q. Who was the city administrator's boss?

8 A. The mayor.

9 Q. Anybody else have authority to issue
10 direction to the city administrator?

11 A. No.

12 Q. What was your understanding of the use of
13 executive sessions while you were sitting as a city
14 council member?

15 A. My perspective today, different than when
16 they were taking place, we took a course on executive
17 sessions here in town -- well, down in Hailey -- that
18 was given by the Attorney General of the State of Idaho,
19 where I learned a bunch of things. Most of what I knew
20 was confirmed, and I learned a couple other things that
21 the Attorney General feels should be extent in the
22 process. So my understanding is it's for things that
23 involve sensitive negotiation, particularly with respect
24 to the purchase of land, land or real estate, any sort
25 of personnel issue that needs to be brought to the

Page 19

Page 21

1 idea about. I don't know the answer to that question.
2 BY MR. SWARTZ:

3 Q. I'm just asking your understanding.

4 A. You know, I don't know. I truly do not know
5 whether or not that is -- I know that all -- I've been
6 told that the council must approve all contracts to
7 allow the mayor to enter into the contracts, and we did
8 that on a regular basis, whenever we contracted with an
9 outside entity, or contracted with anyone having to do
10 with the City. So based on that, I would say likely not
11 be able to enter into a contract of any sort with anyone
12 without council approval. That's without my reviewing,
13 with an attorney, the details of the way the Idaho
14 statutes are written.

15 Q. When you were sitting as a council member,
16 did you ever get down into the details of what hours an
17 employee was working, going back and checking their
18 timecard, anything like that?

19 A. Council should have nothing to do with that.
20 I was a policy maker, and a council person is a policy
21 maker, has no administrative authority whatsoever,
22 except over the officers of the City, which at the time
23 of my tenure it was the treasurer, the attorney, and the
24 clerk.

25 Q. No administrative authority over the city

1 council for whatever reason, and any sort of other
2 operational or administrative issue that the council
3 needs to be involved with. I think that pretty much
4 summarized my understanding.

5 Q. While you were sitting as a city council
6 member, was it commonplace to announce to the public
7 what took place in an executive session?

8 A. No.

9 Q. What was your understanding of sharing
10 information about what took place in an executive
11 session?

12 A. Well, at the time my understanding was that
13 it was executive session, and the subject of the
14 executive session was in fact sensitive, and it wasn't
15 announced. That was what I learned with the attorney
16 general, is that it's preferable to communicate to your
17 citizens what it is that you're meeting about in
18 executive sessions. Preferable. You don't absolutely
19 have to do it. Preferable.

20 When I returned from that course, I brought
21 that forward at council meetings, saying, Maybe going
22 forward we ought to say what we're going to meet in
23 executive session about, to clear the air and make sure
24 it isn't some mystery what's going on. Details, of
25 course, were to be in executive session, but the subject

Page 22

Page 24

1 to be readily available to the public. I agreed with
2 that and brought it forth. That was near the end of my
3 term, so I haven't followed if anything has happened.

4 Q. During your tenure as a city council member,
5 was it your understanding that Mayor Willich could allow
6 Sharon Hammer to take flextime?

7 MR. NAYLOR: Object to the form.
8 Foundation.

9 THE WITNESS: You know, during my tenure, I
10 didn't have a full understanding of what the mayor's
11 level of latitude was. As it was explained to me by the
12 Idaho Association of Cities council, the mayor generally
13 has substantial latitude as long as they stay within
14 their budget and they don't violate policy of the City.

15 BY MR. SWARTZ:

16 Q. It sounds like there was some edification
17 through this training course?

18 A. Multiple training courses, yeah.

19 Q. And it sounds like -- correct me if I'm
20 wrong -- that you took at least a course that you keep
21 referring to as, What do I know now verses what did I
22 know then. That was relatively recent?

23 A. Perhaps I could just give you the
24 chronological part of that.

25 Q. Sure.

1 Q. Approximately when was the last course that
2 you referred to?

3 A. I think it was October, 2013. That was the
4 open meetings law.

5 Q. When you took that course, did you realize
6 that something that you had done as a city council
7 member prior to October of 2013 was perhaps something
8 you should not have done?

9 A. No. I think the way the AG presented it,
10 the one thing I was concerned was we would never say
11 what we were meeting about in executive session, and as
12 I recall, his recommendations was, it's preferable to
13 announce it, but you don't have to. There's nothing
14 that says you have to, but it's preferable. In his
15 experience, it was preferable to say what it is, in
16 general terms. That's what I brought back.

17 I just thought -- and we would get questions
18 from time to time, you're having all these executive
19 sessions, what are they about, so on. So I think saying
20 in general what you're going to meet about would be
21 conducive to a relatively quiescent atmosphere between
22 the council and the public.

23 Q. Did you ever come to have an understanding
24 of who had the job of interpreting the City of Sun
25 Valley's policies?

Page 23

Page 25

1 A. Before I took my position on the council in
2 January of 2010 and November of 2009, I took the
3 introductory course, or the course that the Idaho
4 Association of Cities gives to the -- primarily new
5 council and mayors across the state. They give it
6 regionally. I went to the one in Twin Falls. But other
7 city council and mayors also attend, and they have a
8 full day of programs, going through every last aspect of
9 what it is to run the City, what it is to be a council
10 person, what it is to be a mayor, what you have to watch
11 out for, be careful about, so on. And they give all of
12 their presentation materials that you can then tap into
13 as you proceed as an elected official.

14 So I took that prior to my starting as a
15 council person. I then took it again as a refresher in
16 November 2011, two years later, and then I think it was
17 September or October of 2013, when the AG had their,
18 what they refer to as an open meeting law seminar, of
19 which executive session was a substantial amount of the
20 material that he presented that day.

21 So those were the three, you know,
22 definitive courses that I took. I also went about
23 studying the statutes to the ability of my -- to
24 interpret legal language, and would refer to the statute
25 from time to time, when I had a question.

1 MR. NAYLOR: Object to the form to the
2 extent it calls for a legal conclusion.

3 THE WITNESS: It's hard to answer that one,
4 because the policies are written as somewhat of a team
5 effort to accomplish something good for the City, and
6 then they're put in some level of verbiage, which may or
7 may not be effective. Then you do your best to make
8 them very easy to interpret, very straightforward.
9 There's no multiple interpretations here, kind of thing.
10 Then they're put in place. So I never have even
11 pondered the question who is in charge of interpreting
12 them, because as an elected official I would hope that
13 the council would have made sure the verbiage was so
14 straightforward that there was no reason for
15 interpretation.

16 BY MR. SWARTZ:

17 Q. Do you have any recollection of including a
18 clause in the policies of the City of Sun Valley that
19 authorized or appointed the city administrator as the
20 person who was to interpret the policies?

21 A. This has been brought up in one of the
22 dialogs that accompanied either a lawsuit or a letter,
23 pointing out that something to that effect was approved
24 by the council. Over the years, my tenure, there had
25 been numerous adjustments to the verbiages, as I was

Page 26

Page 28

1 saying, to try to approach a system that was
2 straightforward, whenever a problem was brought up, that
3 we tried to resolve it. If it was in the policy, we
4 tried to modify and edit that policy so it would work
5 better. So I can't remember the wording of that, so I'd
6 have to review it, review the exact wording to see if I
7 would, once again, interpret it as meaning that the city
8 administrator would interpret all policies. I don't
9 know. Like said, I'd have to read it.

10 Q. That's not an understanding that you had
11 while you were sitting as a city council member?

12 A. No. I didn't think that any one person
13 would be the interpretive authority on policy, that we
14 were all trying to have good policies, and ones that
15 worked for the City, and that the interpretation, as I
16 said multiple times, would be straightforward. There
17 would be no need for interpretation.

18 Q. That's the goal. Right?

19 A. That's the goal. Whether or not you achieve
20 that is pretty much a gradual, slow, refinement-type
21 process.

22 Q. Did you vote to terminate Sharon Hammer's
23 employment?

24 A. We consented to a decision that can only be
25 made by the mayor. That was my understanding when we

1 meeting the first time that it was raised?

2 A. I'd been made aware from Mayor Briscoe that
3 he was having difficulty working with Sharon, prior to
4 that meeting.

5 Q. What was the difficulty that Mayor Briscoe
6 was having?

7 A. He just said he was having trouble working
8 with her.

9 Q. When did he take office?

10 A. Somewhere very early, January 3rd,
11 January 2nd, something like that.

12 Q. So between January 3rd and January 19th, you
13 were made aware that Mayor Briscoe was having a
14 difficult time working with Sharon Hammer?

15 A. Yes.

16 Q. Did he elaborate on what he meant?

17 A. No. Didn't elaborate.

18 Q. Did you ask?

19 A. It was a very informal conversation, and I
20 didn't feel comfortable, you know -- I was never
21 comfortable with details of what personnel issues might
22 be. I didn't run for office to be involved with
23 personnel issues. I ran for office to be what I was
24 elected to be, as a policy maker. So I actively
25 avoided, you know, any kind of real involvement with

Page 27

Page 29

1 consented to the termination of the employment contract.

2 Q. What does it mean to consent? Does the
3 mayor have to get your consent?

4 A. No. He just wanted it.

5 Q. And did you give your consent?

6 A. Yes. I voted in favor, to consent to the
7 termination of the employment contract.

8 Q. And this was Mayor Briscoe at the time?

9 A. Yes.

10 Q. Who wanted to terminate the contract and
11 wanted the city council's consent?

12 A. Yes. Correct.

13 Q. Was the consent of the council unanimous, do
14 you recall?

15 A. Yes, it was.

16 Q. Was the vote taken in executive session?

17 A. No.

18 Q. Was it taken in a public session?

19 A. Yes, it was.

20 Q. Was there a discussion -- was that the
21 January 19th, 2012 meeting?

22 A. That -- the exact date, I don't know, but it
23 would be right about that time period, yes.

24 Q. Was there any discussion before that meeting
25 about the termination of her employment, or was that

1 personnel matters, administrative matters of the City.
2 It wasn't my purview to do so. It wasn't my authority.
3 Someone could ask for my advice, but I was never
4 actively involved.

5 I was listening to the person who had to
6 work with the person, and I took that as input.

7 Q. Prior to giving your consent to terminate
8 Sharon Hammer's employment, did you have an
9 understanding that there were allegations made about her
10 misuse of City money?

11 A. Yes. There were allegations on the table.

12 Q. Did you believe those allegations to be true
13 when you consented to terminate her employment?

14 MR. NAYLOR: Object to the form.

15 THE WITNESS: I didn't believe anything at
16 that point. I wanted evidence.

17 BY MR. SWARTZ:

18 Q. Did you have evidence at that point?

19 A. No. We had the beginnings of an
20 investigation, or data presented by the treasurer. That
21 was it.

22 Q. As of January 19th?

23 A. That I had available to me, yes. That I
24 became aware of.

25 Q. What was the scope of the allegations that

Page 30

Page 32

1 you were aware of?

2 A. The ones that I recall are the use of the
3 City vehicle for personal use -- first of all, the use
4 of the City vehicle, period, then use of the vehicle for
5 personal use; flextime associated with working in a
6 flexible manner; and credit card use of a City credit
7 card use for, primarily, if I remember, gasoline for the
8 City vehicle for personal use. Those were the
9 allegations that I recall.

10 Q. Do you recall any allegations about not
11 reporting vacation time?

12 A. That was part of the flextime thing, yeah.
13 Flextime, vacation time.

14 Q. When were those allegations first brought to
15 light, do you recall?

16 A. To me, on the 11th of November in executive
17 session of a special meeting of the city council.

18 Q. Who called that special meeting?

19 A. Nils Ribí.

20 Q. Were you made aware of what the subject
21 matter of that meeting was going to be before it was
22 called.

23 A. Not in detail. Just that there was a
24 serious matter that we needed to meet on, and we need to
25 call this meeting. Didn't get into any details. In

1 If I'm reading your notes correctly, your notes from
2 that session are on pages 1 and 2?

3 A. Yes. That's correct.

4 Q. Do you recall whether you were presented
5 with any materials at that meeting?

6 A. Not individually. There were, if I remember
7 correctly, some pages supporting material for the
8 statements that were made. I think they were passed
9 around and given back to the treasurer. That's what I
10 recall.

11 Q. So who all was present at the November 11th
12 meeting?

13 A. My recollection is myself, Council Member
14 Briscoe, Council Member Ribí, and Mayor Willich.

15 Q. Anyone else?

16 A. That's it. And Michelle Frostensen.

17 MR. NAYLOR: And Adam.

18 THE WITNESS: And Adam. Adam King, the City
19 attorney.

20 BY MR. SWARTZ:

21 Q. When you arrived for the November 11th
22 meeting, what did you learn was the subject matter of
23 the special meeting?

24 A. That there was suspected misuse of City
25 property and funds.

Page 31

Page 33

1 fact, Mr. Ribí said we shouldn't get any details unless
2 we're in executive session on this issue. So nothing
3 was said or discussed.

4 Q. Was it Mr. Ribí that contacted you about the
5 meeting?

6 A. Yes.

7 Q. Once you got into the special executive
8 session on November 11th, what did you learn?

9 A. Those three things, and you can look at my
10 notes, and I would too, and tell you exactly, and tell
11 you those three things.

12 Q. Can you reach over and grab this packet, and
13 let's walk through it?

14 MR. NAYLOR: Do you want to make this an
15 exhibit?

16 MR. SWARTZ: Sure. That would be great.

17 (A Break Was Taken.)

18 (Exhibit No. 1 Marked.)

19 BY MR. SWARTZ:

20 Q. Mr. Youngman, your notes, which you've
21 produced in response to the subpoena, have been marked
22 as Exhibit 1. You have that in front of you. Correct?

23 A. Correct.

24 Q. And we were just about to cover what
25 transpired at the November 11, 2011 executive session.

1 Q. And who suspected the misuse?

2 A. The city treasurer, Michelle Frostensen.

3 Q. And she had material that supported her
4 suspicions that she brought with her?

5 A. She had material that supported allegations
6 that she made.

7 Q. And looking at your notes, can you walk me
8 through what her allegations were?

9 A. Sure. This will be an approximate, what I
10 remember of how it went.

11 Q. Sure.

12 A. From my notes, it says that Ms. Frostensen
13 started out saying that she had contacted Nils Ribí
14 on -- about this, but that prior to this, on October
15 the 5th, she had a meeting with the mayor on essentially
16 the same issues. I don't know they were exactly the
17 same issues. She just said the same issues. I can only
18 represent what she represented there. And that he took
19 them under advisement, but that she saw no -- nothing
20 being done with respect to her concerns.

21 So she had taken it upon herself to contact
22 Councilman Ribí, and brought them forward here. Trying
23 to read some of these. Okay. So she said with respect
24 to Sharon, that there were, in her evaluation of the
25 situation, somewhat apparent lack of accounting for

Page 34

Page 36

1 vacation hours used, and that some vacation hours had
2 been cashed out, and that she suspected that this was
3 not following the accepted procedure for vacation for
4 the City administration. I didn't know what the
5 procedure was, because I was never involved in that.
6 That's what she said.

7 That Sharon was using a City vehicle for
8 personal business. She gave an example, which I wrote
9 down here, and just an example of what she suspected
10 were numerous occasions of use of the vehicle for
11 personal use. She then went on to talk about how there
12 was very little control over gas cards, gas credit
13 cards; had a number for the amount of fuel that Sharon
14 had used in a fiscal year; that Sharon had purchased an
15 iPad and had purchased iPhones for every head at the
16 City, that Mark Hoffman had recently gotten an \$800
17 chair.

18 I don't want to laugh, but this is what we
19 were presented. That Ray Franco had a \$2,000 bonus.
20 There was some discussion about reimbursements from BLM
21 for time at a fire that she felt were not following the
22 specific rules of the federal government. I don't know
23 what those rules were. That Eric Adams had been given a
24 \$10,000 salary increase; that there was some unusual
25 accounting of hours in the fire department with respect

1 THE WITNESS: On the surface you would think
2 so, but I can't say for sure, because I don't know what
3 agreements that people had within the department.

4 BY MR. SWARTZ:

5 Q. Was anyone other than Sharon Hammer alleged
6 to have misused City finances?

7 MR. NAYLOR: Object to the form.

8 BY MR. SWARTZ:

9 Q. During this meeting.

10 A. Not directly that I recall. Could have been
11 some -- could have been some level of, well, this person
12 did that too, but yes, primarily Sharon.

13 Q. Sharon Hammer was the target of the
14 allegations?

15 A. Target? I think it was a concern expressed.
16 I don't think I would use target as a word here. There
17 was no target. We were just trying to find out what was
18 going on.

19 Q. Do you recall how long your executive
20 session lasted?

21 A. Couple hours, at least. Two, three hours, I
22 would estimate. The record will show how long it
23 lasted. I just don't know what it is.

24 Q. The minutes, which is Bates No. SV 2069,
25 show that it went from 2:10 to 4:45.

Page 35

Page 37

1 to the son the fire chief, and then some comment about
2 the fact that this particular employee was found
3 intoxicated at the symphony. I don't know necessarily
4 why that was brought up. It had nothing do with this.

5 Q. What do you mean it had nothing to do with
6 this?

7 A. It's not part of a misuse of City funds.
8 That's subject of the meeting was misuse of City funds,
9 and somebody being intoxicated at a City event was not
10 an administrative issue in my mind.

11 Q. And this was all about Sharon Hammer and her
12 alleged misuse of the City funds?

13 MR. NAYLOR: Object to the form.

14 THE WITNESS: Clearly it wasn't just about
15 Sharon Hammer, because other things were in here.

16 BY MR. SWARTZ:

17 Q. Who would be responsible for approving Mark
18 Hoffman's \$800 chair?

19 A. It would have been Sharon, I assume, unless
20 she had delegated him the authority to decide what chair
21 he wanted and gave him a budget, and he decided on the
22 \$800 one.

23 Q. Other than the intoxication comment,
24 everything is related to Sharon Hammer, isn't it?

25 MR. NAYLOR: Object to the form.

1 MR. NAYLOR: What tab are you talking about?

2 THE WITNESS: I couldn't have been more
3 accurate four years later. It was about two and a half
4 hours. Two hours, 45 minutes.

5 BY MR. SWARTZ:

6 Q. And during that two hours and 45 minutes,
7 you had a chance to listen to Michelle Frostensen's
8 allegations and review her supporting material. Right?

9 THE WITNESS: Yes. We looked at what she
10 had provided. I recall looking at some level of
11 material, not in any detail.

12 BY MR. SWARTZ:

13 Q. Did Mayor Willich have anything to say about
14 the allegations that he didn't follow up with on
15 Michelle Frostensen's concerns that she brought to him?

16 A. I recall him saying, I reviewed these, and I
17 wasn't concerned about them. That's what I recall him
18 saying.

19 Q. Why did the meeting proceed beyond that?

20 A. Well, because I think that the council had
21 concern based on the data that Ms. Frostensen was
22 providing. You know, obviously didn't agree with the
23 mayor on whether or not it was serious.

24 Q. Who was in charge of personnel issues at the
25 City?

Page 38

1 MR. NAYLOR: Object to the form.
2 THE WITNESS: The administration of the City
3 is under the purview of the mayor.

4 BY MR. SWARTZ:

5 Q. And that would include personnel issues?

6 THE WITNESS: Personnel issues, yes.

7 BY MR. SWARTZ:

8 Q. And when he told Michelle Frostensen that he
9 wasn't concerned about these allegations, and when he
10 told the city council that he wasn't concerned about
11 these allegations, he'd reviewed the materials, didn't
12 think there was anything of it, why did the city council
13 continue to push the issue?

14 MR. NAYLOR: Object to the form.

15 THE WITNESS: The council has a fiduciary
16 responsibility to the citizens of the City. If there is
17 suspected misuse of funds, the council takes that very
18 seriously. As a council -- I can't speak for other
19 council members, but I was in the position of wanting to
20 just know what was going on; that one employee, the
21 treasurer of the City, the City official, coming forward
22 to the council making allegations, I didn't want to
23 dismiss them without getting more data and understanding
24 what was going on.

25 May or may not have a larger body of data to

Page 39

1 draw from, a larger body of understanding. He did not
2 at the time provide any understanding to us. Didn't
3 willfully, and I don't know that we asked him to, but
4 the opportunity clearly was there. We took the
5 allegations seriously, and wanted to -- as I say, I
6 speak only for myself -- wanted to just get to the
7 bottom of what the allegations were about. It all has
8 to do with fiduciary responsibility, not administrative
9 duty.

10 BY MR. SWARTZ:

11 Q. During the November 11th meeting, did
12 Mayor Willich, if you recall, tell you that he
13 authorized Sharon Hammer to use the City vehicle?

14 A. No. He did not say at that meeting.

15 However, at a later meeting, he did. He told us that he
16 had verbal agreements for use of the vehicle, and verbal
17 agreements on use of the flextime and accounting of
18 vacation. And that would have been very good
19 information to have on the 11th, but we did not have
20 that information.

21 Q. Do you recall when he shared with you --

22 A. As I say, there ended up being a number of
23 meetings thereafter, as you probably know, so I could be
24 defective in remembering, but I think it was the next
25 meeting, or the meeting after that. But I think we had

Page 40

1 a meeting on the 14th, a Monday, and I think he informed
2 us at that point in time that he had verbal agreements
3 with Sharon for use of the vehicle, and for having
4 flextime in place, and my response to that at the time
5 was, Great. So all we have are the credit card charges
6 that we have to try to understand here.

7 Q. Were the allegations of use of the City
8 vehicle and the flextime pursued after the November 14th
9 meeting, after Mayor Willich shared with you that he had
10 authorized the flextime and authorized the use of the
11 vehicle?

12 MR. NAYLOR: Object to the form.

13 THE WITNESS: I had sort of mentally
14 dismissed those, and was just looking more to the credit
15 cards.

16 BY MR. SWARTZ:

17 Q. What was the -- do you recall what Mr. Ribi
18 had to say during the November 11th meeting?

19 A. Not in detail. I mean, there was obviously
20 a two hour and 45-minute meeting. The tenor of the
21 meeting was, let's get to the bottom of this. Let's get
22 the data, let's see what's going on so we can make an
23 educated -- have an educated evaluation. Is there
24 something, is there nothing, is there a little bit here,
25 there, so on. That was the tenor of the meeting as I

Page 41

1 took it, and I think the questions from all the council
2 and the mayor were in that vein.

3 Q. So what is the plan that you all came up
4 with to look into these allegations?

5 A. There was no plan. At the time we did not
6 know that there was a verbal agreement between the mayor
7 and Sharon with respect to the use of the vehicle and
8 the flextime, vacation. Given that the treasurer is the
9 person who accounts, in a financial sense, for all of
10 these things, for the vacation time in particular, and
11 it was stated that there was a City policy that there
12 was to be no personal use of any City vehicle. Clearly
13 that policy was not being abided by, but we did not know
14 that there was this verbal agreement.

15 And so in discussions that ensued at the
16 latter part of the meeting, I think that there was some
17 level, since the mayor was not presenting anything
18 contrary at the time, that we felt that perhaps these
19 things were in fact the case. The mayor is the boss of
20 this person, the manager of this person, and would know,
21 should know, have intimate knowledge of all of this. We
22 advised him that it sounds like it's a difficult
23 situation.

24 Remember, we're just advising, because we
25 have no authority, and that my position was that it was

Page 42

Page 44

best to find the most quiescent way to resolution, and one of the things that was discussed was that, if they were true, to present these allegations to Sharon, with the City attorney present, get her response, and then come back to the council, and the mayor did that. We didn't tell him to do that because we can't. He's the first person to tell you that the council can't tell him what to do, particularly on administrative issues. He was taking our advice.

He and Adam went to Sharon and presented that. I have no idea what transpired. Was not present. We were later informed, I can't remember in what meeting, exactly what words were spoken, but that she denied all of it, and that at that point I was, Oh, she denied it all. But there's all this data that supports it, so we need to resolve that. That's what I was looking for.

Q. Was that part of the reason why, emerging from the November 14th meeting, the council decided to hire a fact-finding investigator to resolve the discrepancy --

A. Yes.

Q. -- between the denial of the allegations and what you've described as supporting data?

MR. NAYLOR: Object to the form. Go ahead.

other allegations about what was going -- the letter writer's view of what was going on. So you know, that could mean that there would be a threat of litigation, based on the fact that they totally disagreed with what was going on.

Q. Is that, in your opinion, why the investigator was retained?

A. No. In my mind, it was all about fact finding. Here you've got the treasurer of the City making allegations about misuse of City funds. As a city council, that's our job, our fiduciary responsibility to the citizens.

Q. When the city council voted to hire this fact investigator, had the mayor shared with you by that time that there was nothing wrong at issue, that he had authorized everything that had transpired?

A. He didn't say that he authorized everything. He said that he had authorized the use of the vehicle and the flextime, but there were the credit card charges and a bunch of other things you see in these notes. There may have been other things that I didn't write down.

Q. Did the city council direct the fact-finding investigator to look into the flextime issue or the use of the City vehicle issue after Mayor Willich had

Page 43

Page 45

THE WITNESS: Yes. Essentially that's why we wanted the investigative report, and an independent person who wasn't involved, that doesn't know anyone, and just comes in and looks at what's available, and there's something here, or there isn't.

BY MR. SWARTZ:

Q. When the city council decided to find that independent person to look at the facts, was the city council concerned at all about Sharon Hammer suing the City?

A. It's hard to get that straight, there are so many --

Q. That was back on November 14th.

A. The reason I say that, I think at the 14th meeting there were no lawsuits that had been filed. It's almost impossible to get it done anyway, so I'm pretty certain that's the case. However, a very long letter was delivered to certain council members personally by Jim Donoval. My memory is it was Friday night the 12th that I received a knock on my door at 8:30 at night, and Mr. Donoval and an associate were present, and gave me this letter.

In the letter it's a whole bunch of -- I can't remember the details of the letter. You know, basically denying the charges, and then making some

advised the city council that it was all authorized?

MR. NAYLOR: Object to the form.

THE WITNESS: The direction of the council to the those in charge of the investigation was to do an investigation, period. People selected for heading up that investigation at that meeting were mayor and mayor elect, Mayor Willich and Mayor Elect Briscoe. They were to work together finding an investigator, and conduct an investigation. The city council gave no directives as to exactly what to do. That's exactly why we're getting an investigator.

BY MR. SWARTZ:

Q. So Mayor Willich and Mayor Elect at the time Briscoe, as you understand it, determined the scope of the investigation?

A. I don't know. I mean, we directed them to do an investigation and provided them the authority to expend funds to do so. I was hands off. I didn't play a part in that process at all. In fact, I wasn't even interviewed during the investigation.

Q. Did you find that odd?

MR. NAYLOR: Object to the form.

THE WITNESS: No. I had nothing to do with it. Obviously I wasn't within the purview of the investigation, which would be appropriate, because I'm a

Page 46

1 policy maker, not an administrator, and most of this was
2 administration based, not like a council member was
3 accused of misusing funds.

4 BY MR. SWARTZ:

5 Q. Do you recall the executive session that was
6 held on November 14, 2011?

7 A. Do I recall it?

8 Q. Yes.

9 A. Yes.

10 Q. What took place during that executive
11 session?

12 A. That's what we were just talking about. The
13 directive to start an investigation, the information
14 from the mayor that he had verbal agreements on two of
15 the three issues that were of concern to me, and that
16 was basically the subject of the meeting.

17 Q. Was there any more documentation to support
18 the allegations that was brought to the November 14th
19 meeting?

20 A. I can't be certain, but I know that more and
21 more data was being produced during that period.

22 Q. Do you know who was presenting it?

23 A. Primarily Ms. Frostensen, the treasurer.

24 Q. Do you know who was asking her to produce
25 it?

Page 47

1 A. I don't know that anyone was. I don't know.

2 Q. Do you have any notes from the November 14th
3 executive session?

4 A. I don't. I just don't. That's part of the
5 record that I took, you know. As I've said, I was after
6 facts. We weren't getting any facts, so I had no notes,
7 really, to take.

8 Q. The numbering that's up in the upper
9 right-hand corner of your notes, that's not you?

10 A. That's Mr. Naylor's numbers for the pages in
11 the exhibit. My notebook does not have page numbers.
12 It has -- they're just blank pages.

13 Q. Is there any other writing on pages 1
14 through 10 that's not yours?

15 A. No. It's all my writing.

16 Q. Do you recall who was present at the
17 November 14, 2011 executive session?

18 A. Myself, Councilman Briscoe -- Mayor
19 Elect Briscoe, Councilman Ribi, Councilwoman Lamb, I
20 think was on the telephone. Mayor Willich, Adam King,
21 City attorney. I think that was it. There was no one
22 else there. And it was held in the Edelweiss Room, I'm
23 pretty certain the Edelweiss Room at the Lodge, the Sun
24 Valley Lodge.

25 Q. The decision, then, that was made at that

Page 48

1 November 14th meeting was to hire the fact investigator.
2 Correct?

3 A. To find an investigator and get an
4 investigation going.

5 Q. Let me have you take a look at Bates
6 No. SH - Timeline 8.

7 A. That first page?

8 Q. That first page, yeah, 8 through 12. I'm
9 just going to ask you whether that's the letter that
10 Mr. Donoval served on you.

11 A. My recollection is yeah, this would likely
12 be it, but since I don't have my copy of it with me, I
13 can't confirm that. I may not even have my copy
14 anymore.

15 Q. Do you recall whether --

16 A. This says it was on the 13th, so my memory
17 of the time I received it perhaps is incorrect.

18 Q. Do you recall whether this November 12th
19 letter was discussed during the November 14th executive
20 session?

21 A. Not directly. I think it may have been
22 referred to, but I don't recall going through it.

23 Q. Let me have you turn just beyond that
24 letter, and there's one behind it, also dated
25 November 12th, to Mayor Willich, and that's Bates SH -

Page 49

1 Timeline 13 through 14. Do you see that?

2 A. Yes.

3 Q. Do you recognize that letter?

4 A. No. I don't think I've seen this one.

5 Q. Were there allegations of criminal
6 misconduct that were being raised at the November 11th
7 executive session?

8 A. No. Not at that one. The 14th meeting,
9 there was, I vaguely remember some discussion about
10 there's a point at which misuse of funds becomes
11 felonious, and we didn't know what it was, but that we
12 had to have additional concern, as fiduciaries for the
13 City, we needed to be concerned that we may in fact be
14 somewhat culpable if we don't pursue an understanding
15 what was going on, because it could be at a criminal
16 level, but there was no detailed discussion that it
17 could be criminal at that time.

18 Q. Who suggested that it could be criminal in
19 nature?

20 A. I don't know. It was a general discussion
21 topic. I can't remember who brought it up. Obviously
22 somebody brought it up first. I just don't remember who.

23 Q. Did you ever come to know that Sharon Hammer
24 was complaining of Nils Ribi harassing her?

25 A. In an oblique way during the meeting, the

Page 50

1 mayor claimed that there should be some concern over
2 lawsuits here because of concerns that were filed by
3 Sharon with the administration and with Adam, Adam King.
4 Q. What was the nature of the complaints?
5 A. We never saw the complaints, and he didn't
6 talk in detail at that point about what they were. He
7 just said they existed.
8 Q. Did he state that they were in relation to
9 Nils Ribi?
10 A. He made a gesture towards Nils, and said
11 that, You should be concerned. That's my recollection.
12 That was it.
13 Q. So your takeaway from that was that
14 Ms. Hammer had made complaints about Nils Ribi to Adam
15 King and Mayor Willich?
16 MR. NAYLOR: Object to the form.
17 THE WITNESS: Based on what he said, that
18 seemed to be the case, as to the conversation
19 preceded -- Mayor Elect Briscoe said, Wait a minute,
20 wait a minute, what are we talking about here? That is
21 all news to us. As far as I know, it was news to
22 everyone in the room, except for the mayor and the
23 attorney. To all the council members present, we had no
24 idea there was any complaint about anything, so it was
25 total news to us. And Mayor Elect Briscoe went on to

Page 51

1 say, We need to understand what these allegations are if
2 they're going to play a role in this.
3 BY MR. SWARTZ:
4 Q. And what was the response?
5 A. Nothing of substance.
6 Q. Do you have any recollection of whether
7 Mayor Willich elaborated at all?
8 A. No. He did not elaborate, to my
9 recollection. I didn't know the details. To this day,
10 I don't know what they are. I shouldn't. I'm not --
11 don't have any administrative or official
12 responsibilities to the extent that it deals with a
13 contract with an employee.
14 Q. Was there any discussion of Nils Ribi having
15 a conflict of interest as a result of the complaints
16 that Sharon Hammer had made against him?
17 A. No. A conflict of interest had never come
18 up.
19 Q. Did a conflict of interest ever come up at
20 any time when the city council was making decisions with
21 regard to Sharon Hammer at the time that you and Nils
22 Ribi were being sued?
23 A. I think by then Mr. Naylor was involved, and
24 he was perhaps giving counsel that we needed to be
25 careful about the crisscross here, and since I'm totally

Page 52

1 ignorant of the process with respect to that kind of
2 thing, I totally relied on our counsel for advice there.
3 Q. Did you -- after the point in time when you
4 were getting sued by Ms. Hammer, did you continue to
5 participate in addressing allegations about her misuse
6 of City finances?
7 MR. NAYLOR: Object to the form.
8 THE WITNESS: No.
9 BY MR. SWARTZ:
10 Q. You recused yourself?
11 A. No. We weren't making any decisions. It
12 was an ongoing investigation, the results of which we
13 were waiting for. So there were no actions on my part,
14 other than making sure that the investigation proceeded.
15 Q. Do you recall what happened at the
16 November 17, 2011 meeting?
17 A. I don't remember the meeting. Perhaps I
18 could have a -- some sort of reminder of what it is.
19 Q. Let me see if we've got something here.
20 A. I see an agenda.
21 Q. Under Tab 6?
22 A. Yes. I have notes in my notebook on this
23 meeting. I think not of the executive session, however,
24 if there was one. It says there might be one. I assume
25 there was one.

Page 53

1 Q. It appears, on page two 2 of the meeting
2 minutes, that an executive session was called.
3 A. Yes, here. Mayor Elect Briscoe moved to
4 move into -- I don't recall that meeting. I don't have
5 any real memory of it in detail. I have no notes.
6 Q. There's no notes of that meeting?
7 A. There are no notes in there. You have
8 everything that I took notes on.
9 Q. Do you recall when you received the
10 investigator's report?
11 A. I did not take receipt of the investigator's
12 report until it was made public to the -- until it was
13 made public. I did not read it, I did not review it.
14 Q. Until it was made public?
15 A. Until it was made public.
16 Q. When you say made public, is that when it
17 was in the Idaho Mountain Express?
18 A. Approximately. I can't remember whether the
19 Mountain Express put it up first or the City put it up
20 first, because it was actually coming from the county
21 prosecutor. If I remember, he was making those
22 documents public. He wasn't publishing them, but he
23 made them available to be published. That's my memory
24 of it.
25 Q. So prior to it becoming public, do you have

Page 54

Page 56

1 any recollection of seeing any drafts?

2 A. No. I had no interaction whatsoever with
3 the investigator, with others. If something came up, I
4 excused myself. I didn't want to be a part of that. I
5 found that it would serve no purpose whatsoever.

6 Q. Do you have any recollection of the city
7 council directing the investigator to report to any
8 lawyer for legal advice?

9 A. We were not directing the investigation, so
10 the answer would be no. We weren't telling the
11 investigator to do anything. The mayor and mayor elect,
12 and initially, I think the City attorney, were the team
13 that was involved with the investigation. What they did
14 I have no knowledge of.

15 Q. Did Adam King ever, at any time during the
16 investigation, back off of being involved in it?

17 A. I think that, if I remember correctly -- I
18 could be totally wrong -- but I think when the lawsuit
19 was filed it was advised that he not be a part of the
20 investigation anymore, be involved with it.

21 Q. Do you have any recollection of any lawyer
22 taking his place in being involved in the investigation?

23 A. Not that I was made aware of. Obviously
24 Mr. Naylor was on the scene, but I don't recall there
25 being any official this or that. But the mayor and

1 BY MR. SWARTZ:

2 Q. Hang on just a sec. I want it to be very
3 clear that if you need to see your notes in an
4 unredacted format, you've got the right to do that. I
5 don't necessarily have to see what is redacted, but if
6 you need to see what is redacted to refresh your
7 recollection, let's do that today. Okay?

8 A. Sure.

9 (A Break Was Taken.)

10 BY MR. SWARTZ:

11 Q. Mr. Youngman, we've had a chance to take a
12 break. You've had a chance to speak with Mr. Naylor.
13 Do you have anything to add?

14 A. I've forgotten where we were on the
15 question, if you could possibly restate the question.

16 Q. Well, you drew a blank because of the
17 redactions.

18 A. But what was your question? That's what I'm
19 trying to remember.

20 MR. NAYLOR: I don't think there was a
21 pending question.

22 BY MR. SWARTZ:

23 Q. We were talking about the January 10th
24 meeting with Patty Ball, and you were walking through
25 your notes, and then stopped and said, They're redacted.

Page 55

Page 57

1 mayor elect were in a position to do as they saw fit.

2 Q. Do you have any recollection of Sharon
3 Hammer being discussed at the November 17, 2011 meeting?

4 A. I cannot remember that meeting. I just
5 don't remember specifically that meeting. There were a
6 number of meetings.

7 Q. What do you recall from the investigator's
8 report, once it was made public and you read it? Any
9 recollection?

10 A. Well, I have notes from a meeting with
11 Ms. Ball on the 10th of January, in executive session,
12 once again at the Edelweiss room, at 8:00 a.m. She took
13 some accurate notes. I have written down who was
14 present. Ms. Ball, Mr. Naylor, Councilman Ribb, at this
15 time Mayor Briscoe, Councilman Franz Suhadolnik,
16 Councilwoman Griffith. Ms. Ball was giving a high-level
17 review of her report. I can't remember whether there
18 were any materials available or not. I'm not in
19 possession of any.

20 And she just went through, as I understood
21 it, those things that were substantial outputs from the
22 investigation. It looks like -- my notes have been
23 redacted. As you can see, page 5 is blank. So my
24 understanding is I should not speak to those.

25 MR. NAYLOR: Let's take a break.

1 A. My memory of the question was, what
2 happened, what did she say during that meeting. Now
3 that I've reviewed the redacted part, this is what I
4 took notes on what she said. This is it.

5 MR. NAYLOR: For the record, this, page 4 of
6 Exhibit 1.

7 THE WITNESS: Page 4 of Exhibit 1 were the
8 notes I took on what Ms. Ball was saying. So basically,
9 I talked about the two or three issues that she was
10 initially looking at, that she had initially only
11 investigated 1 through 3, but then upon investigation,
12 things, other things came to light, and on November
13 the 30th the investigation was expanded to the entire
14 department. That's the extent of the notes that I have
15 from what she said during that meeting. She was giving
16 a high-level sort of overview.

17 BY MR. SWARTZ:

18 Q. Had the report been published as of the
19 January 10th meeting, the report that you had read?

20 A. I had not read it at that point, because it
21 had not been made public. My understanding, my
22 recollection is that yes, it had been written, but I'm
23 not a hundred percent certain because I never got a copy
24 of it.

25 Q. What was the direction that Patty Ball was

Page 58

1 given at the January 10th meeting? Finish up a report?
2 Continue on with her investigation? Anything along
3 those lines?

4 A. My recollection was this was the high-level
5 review of the work product.

6 Q. So it was done as of the January 10th
7 meeting?

8 A. Yes. My recollection, I should say.

9 Q. Did Patty Ball also report on her
10 investigation into Sharon Hammer's allegations against
11 Nils Ribí?

12 A. I don't remember that being discussed here.
13 I don't remember it being discussed.

14 Q. Do you have any recollection of that ever
15 being discussed?

16 A. It must have, because there was a note back
17 on page 3 of Exhibit 1, Executive Session 15 December,
18 non-redacted section there, you will see it says,
19 "Investigative Report: No finding of actionable conduct
20 by Nils Ribí, dash, offensive but not in violation of
21 City policy." So that was obviously reported back in
22 this December 15th meeting.

23 BY MR. SWARTZ:

24 Q. Who was at the December 15th meeting?

25 A. I don't know exactly. I can't remember that

Page 59

1 meeting in detail. We can look it up, because it's
2 executive session. I'm not certain of who was present.

3 Q. Who was making this report that you're
4 making your notes on?

5 A. The December 15th meeting? I don't know.
6 It's my note. That's all I remember from that. I don't
7 even remember the December 15th meeting in any detail.
8 Obviously there was a meeting, but I don't remember.

9 Q. Whose idea was it at the December 15th
10 meeting to turn information over to the county
11 prosecutor?

12 A. I don't know. I don't know. Sorry.

13 Q. All these redactions that Mr. Naylor has
14 made to your notes, were they related to Sharon Hammer's
15 lawsuits against the City?

16 A. Not all the things that have been blanked
17 out here have anything to do with that. I take notes in
18 sequential order, so there was a totally different
19 meeting here, and this section was something entirely
20 different.

21 Q. Had nothing to do with Sharon Hammer --

22 A. When you see executive session, 15 December,
23 and you see a section of that meeting redacted out, then
24 that's been redacted, but the other stuff's been covered
25 up because it doesn't have anything to do with what

Page 60

1 we're talking about.

2 Q. Has nothing to do with Sharon Hammer?

3 A. Right.

4 Q. So everything that's been redacted has
5 nothing to do with Sharon Hammer?

6 A. Everything that's been redacted, that's
7 separate from the executive session meeting notes, has
8 nothing to do with Sharon Hammer. But the section here,
9 where you can clearly see what's underneath there was
10 taken out, was redacted.

11 Q. Because it has nothing to do with Sharon
12 Hammer?

13 A. I didn't redact it, so in detail I don't
14 know exactly why it was redacted. I don't know what's
15 under there. I'd have to look at notes. I don't know
16 what's under there. Could be legal advice. I don't
17 know.

18 MR. NAYLOR: And we can provide you a
19 privilege log as to which parts are attorney-client
20 privilege.

21 MR. SWARTZ: We're definitely going to need
22 the privilege log, and we may end up coming back to do
23 this again.

24 MR. NAYLOR: Why would that be?

25 MR. SWARTZ: Based on that privilege log.

Page 61

1 He has no idea what's redacted, I have no idea what's
2 redacted. We don't have a privilege log.

3 MR. NAYLOR: We can clarify. He just
4 reviewed the book. If you can just review your notebook
5 as to what portions were redacted, versus what was not
6 relevant, in this exhibit.

7 THE WITNESS: I couldn't do that. I don't
8 have a memory of it.

9 MR. NAYLOR: Didn't we just do that?

10 THE WITNESS: Yeah. My understanding was
11 most of it that's redacted was, either it had nothing to
12 do with what we're talking about, different issue, or it
13 was legal advice, which was attorney-client privilege.
14 That was the only reason that anything would be
15 redacted.

16 BY MR. SWARTZ:

17 Q. What's the different matter that's not
18 related to Sharon Hammer that's been redacted?

19 A. I'd have to look at that particular page.
20 It may be legal advice on that one. On another one, it
21 could be something that just doesn't have any bearing on
22 this, has nothing to do with the subject.

23 MR. SWARTZ: Mr. Naylor, is that going to be
24 on the privilege log as well, whatever has been
25 redacted?

Page 62

1 MR. NAYLOR: No. The subpoena requested
2 information related to Sharon Hammer's employment and
3 termination and the lawsuits. I think what Mr. Youngman
4 has made clear was there were other meetings to do with
5 other City business that are in the notebook, and those
6 are not included.
7 MR. SWARTZ: That's fine. We're going to
8 have that itemized on the privilege log so we can tell
9 what's what?
10 MR. NAYLOR: No. Because those weren't
11 requested, nor are they responsive to the subpoena. So
12 the only thing that would be responsive that would be
13 redacted would be anything related to Sharon Hammer that
14 was attorney-client privileged.
15 MR. SWARTZ: Right. And I wanted to be able
16 to look at Exhibit 1 and be able to determine which
17 redaction is because of the privilege and which
18 redaction is because you think it's nonresponsive.
19 MR. NAYLOR: What you'll get is, on page 3,
20 redaction, attorney-client privilege, and who was
21 present, and what that date was. Or you know, but if
22 there was a page that is totally irrelevant to the
23 request, and unresponsive, then it may not even be
24 copied, because there were pages that were totally
25 related to other business.

Page 63

1 MR. SWARTZ: If there was something in
2 Exhibit 1 that has been redacted because it's
3 nonresponsive, when you get back to the office, can you
4 indicate that on that particular redaction so we know
5 what's a nonresponsive redaction, or what is a privilege
6 redaction?
7 MR. NAYLOR: I think I could do that.
8 MR. SWARTZ: That would be helpful.
9 MR. NAYLOR: Just to show how much is
10 redacted on that page because of attorney-client
11 privilege versus irrelevant?
12 MR. SWARTZ: Bingo.
13 MR. NAYLOR: All right. I can do that.
14 BY MR. SWARTZ:
15 Q. Do you have any notes from the December 2nd
16 executive session?
17 A. No. No notes. These are they. If it's not
18 here, then I don't have notes.
19 Q. Was it your practice to take notes at each
20 executive session?
21 A. No. I only take -- my approach to notes is
22 I take notes when I think there's something worth taking
23 a note of. I don't note everything.
24 Q. Do you have any recollection of the
25 December 2nd executive session?

Page 64

1 A. Not in any specificity.
2 Q. How about generally?
3 A. Not even generally. There were so many
4 meetings, they've all merged into a mass of events.
5 Q. Do you have any recollection of the
6 January 5th, 2012 executive session?
7 MR. NAYLOR: He's just asking if you have a
8 recollection.
9 THE WITNESS: No. Offhand. I'd have to be
10 prompted to remember any details.
11 BY MR. SWARTZ:
12 Q. And you don't have any notes?
13 A. No notes.
14 Q. If you can go to Tab 8, see if that helps
15 refresh your recollection.
16 MR. NAYLOR: That's the December 2nd
17 meeting?
18 MR. SWARTZ: Correct.
19 MR. NAYLOR: I thought you just asked him
20 about the January 5th meeting.
21 MR. SWARTZ: Yeah. We're going to back up.
22 THE WITNESS: Do you want the December 2nd?
23 BY MR. SWARTZ:
24 Q. Yes.
25 A. I do have vague memory of Joann Lamb being

Page 65

1 present. That's what's sparking any memory I have, but
2 detail of what happened in executive session, I just
3 don't remember what was discussed there. Apparently
4 it's the Sage Room of the resort. I just don't
5 remember. I didn't take notes, so there was probably
6 not a lot that I would have considered, at the time,
7 major.
8 Q. But according to the meeting minutes, it had
9 to do with an employment issue.
10 A. I've drawn a blank on exactly what was
11 discussed there.
12 Q. Do you have any recollection of being
13 presented with Ms. Hammer's offer regarding how her
14 administrative leave was going to be classified?
15 MR. NAYLOR: Object to the form.
16 THE WITNESS: I don't remember being made
17 aware of anything like that.
18 BY MR. SWARTZ:
19 Q. Do you have any recollection of her
20 requesting that it be deemed her working from home
21 versus administrative leave?
22 A. I don't recall that being requested.
23 Q. Do you have any recollection of Ms. Hammer
24 making an offer to resolve her complaints against the
25 City in exchange for Nils Ribi resigning?

Page 66

Page 68

1 A. I do remember that, yes.
2 Q. Do you recall discussing that at any of the
3 executive sessions?
4 A. I think it was discussed. I think -- my
5 memory is that Councilman Ribi said that he would not
6 resign, so there was nothing to discuss.
7 Q. Did Councilman Ribi recuse himself from the
8 discussions?
9 A. We didn't discuss it, because he refused to
10 resign, so there was nothing to discuss.
11 Q. Do you recall receiving an offer from
12 Ms. Hammer to resolve her lawsuit against the City in
13 exchange for receiving an apology from the City and a
14 two-year contract?
15 A. I do remember that offer coming forward.
16 Q. Was that discussed in executive session?
17 A. I think it would only, if it was discussed,
18 have been discussed in executive session.
19 Q. Do you have any recollection of what was
20 decided in regard to that offer?
21 MR. NAYLOR: Object to the form, and to the
22 extent it calls for attorney-client privilege
23 communications, instruct you not to answer.
24 THE WITNESS: We were receiving legal advice
25 at the time, under attorney-client privilege.

Page 67

1 MR. NAYLOR: You can answer the question as
2 to what your decision was, but not as to what was
3 discussed.
4 THE WITNESS: The decision was to not accept
5 the offer.
6 BY MR. SWARTZ:
7 Q. Do you recall why?
8 MR. NAYLOR: Object to the form to the
9 extent it calls for attorney-client privileged
10 communications. I think that delves into
11 attorney-client privilege.
12 BY MR. SWARTZ:
13 Q. I'm not asking what Mr. Naylor may have said
14 to you. I'm just asking whether you recall why the
15 offer was rejected by the council.
16 MR. NAYLOR: By its very nature, the
17 question would be related to legal counsel from whatever
18 attorneys were present, would have been involved.
19 BY MR. SWARTZ:
20 Q. I'm asking for your personal decision. I'm
21 not asking for anybody, what counsel may have told you.
22 Do you have any recollection of why you personally
23 decided to reject the offer?
24 MR. NAYLOR: Let's take a break and I'll
25 find out -- I don't see how you get around it, but let's

1 check.
2 (A Break Was Taken.)
3 MR. NAYLOR: In aid of assisting, can you
4 refresh his recollection when that offer that you're
5 referring to was made?
6 BY MR. SWARTZ:
7 Q. It was a December 7th offer, is when it was
8 dated.
9 A. Okay.
10 MR. NAYLOR: Then you can answer his
11 question as to what your thought process was,
12 independent from any legal advice that was given as to
13 that offer.
14 THE WITNESS: Well, there was an ongoing
15 investigation at that point in time, and we did not have
16 any results from that, so it made no sense to respond to
17 an offer for a situation we didn't have all the
18 information on yet. That was my position. You asked
19 for my personal. That's the way I felt about it. I
20 couldn't respond now, because I don't know what has
21 transpired and if there's anything, so it was impossible
22 to respond to it.
23 BY MR. SWARTZ:
24 Q. What was still an open question as of
25 December 7, 2011?

Page 69

1 A. In my mind, primarily credit card use.
2 Didn't have any feedback on that, whether there was any
3 substantiation or not.
4 Q. Who approved those credit card expenditures?
5 A. Credit card expenditures, I can't remember
6 the timing of those, but we came to the realization that
7 the council wasn't approving the credit card
8 expenditures. They weren't in the yellow sheets. My
9 initial understanding, as I was informed when I first
10 became a council member, that everything was in the
11 yellow sheets. As it turned out, not everything was,
12 and one of those things, the credit card expenditures
13 were not in there.
14 Q. And those were the things that were an open
15 question in your mind --
16 A. Apparently the gas credit cards were in that
17 group. There were other credit cards as well, but the
18 gas credit cards were as well, so it was a matter of
19 data generation, hopefully a mileage log compared to
20 use, some way of resolving it. That's the
21 investigator's expertise. Not mine.
22 Q. Whose job was it to make sure that the
23 credit card expenditures were legitimate?
24 MR. NAYLOR: Object to the form.
25 THE WITNESS: Based on them not being

Page 70

1 provided to the council, I don't know, because we
2 never -- I don't remember ever been exposed to them.
3 BY MR. SWARTZ:
4 Q. Was the City treasurer's responsibility to
5 make sure that expenditures were legitimate before they
6 were approved?
7 MR. NAYLOR: Object to the form.
8 THE WITNESS: If you read the
9 responsibilities of a treasurer, it's to make sure that
10 all financial accounting is accurate.
11 BY MR. SWARTZ:
12 Q. That would include the expenditures that
13 were, in your mind, an open issue and still needed to be
14 investigated?
15 MR. NAYLOR: Object to the form.
16 THE WITNESS: I don't know what the process
17 was for approval of those. The administration could
18 have any number of processes, more control systems in
19 place. I did not know what those were, so I don't know
20 exactly what the treasurer's part of that process was.
21 BY MR. SWARTZ:
22 Q. Were the expenditures that were at issue by
23 the time this December 7th offer was made, had they been
24 approved and paid?
25 A. Yeah. They were past expenditures, so by

Page 71

1 definition they had been paid.
2 Q. Who approved them?
3 A. Don't know, because they weren't part of the
4 yellow sheets, so they were not part of the packages
5 that the council got, so I don't know who put their
6 signature on those.
7 Q. It would have been the city council who
8 approved the expenditures, ultimately?
9 MR. NAYLOR: Object to the form.
10 THE WITNESS: The city council would approve
11 of the total, of which -- part of which the council
12 never see, but the council didn't know it wasn't seeing
13 it. At least I didn't. I didn't know we weren't seeing
14 those.
15 BY MR. SWARTZ:
16 Q. Whose job was it to present them to the
17 council?
18 A. The administration.
19 Q. Who within the administration?
20 A. Ultimately it would be the mayor that would
21 see that everything was provided so the council could --
22 it's his administration. Yes, we have a City officer,
23 the treasurer, who reports in a fundamental way to the
24 council, but we're not the administrative manager. The
25 mayor is, and the mayor may have some control system

Page 72

1 that he or she prefers, and they put that in place and
2 we may not know about it, and in this case apparently
3 the credit card receipts were not presented to the
4 council.
5 Q. In a typical city council meeting, isn't it
6 true that the city treasurer would present a packet of
7 expenditures, present them to the council as legitimate,
8 and ask the city council to approve them?
9 MR. NAYLOR: Object to the form. Calls for
10 a legal conclusion.
11 THE WITNESS: Yeah, I'd have to --
12 BY MR. SWARTZ:
13 Q. I'm not asking for a legal conclusion.
14 You're a city council member, sitting on the bench.
15 Typical meeting, it's on the agenda, the city treasurer
16 stands before you and says, Here's your packet of
17 expenditures. I've reviewed them, they're accurate,
18 they're legitimate, now I'm asking for the city council
19 to approve it. Didn't that happen at every city council
20 meeting?
21 MR. NAYLOR: Object to the form. Asked and
22 answered.
23 THE WITNESS: What?
24 MR. NAYLOR: Asked and answered.
25 THE WITNESS: As a city council member, it

Page 73

1 was our understanding that everything, all the expenses
2 of the City were captured and presented to the council
3 for approval after being certified by the
4 administration, and that the process the administration
5 had in place to put that certification forward was the
6 one we were accepting.
7 BY MR. SWARTZ:
8 Q. And who does that? The city treasurer?
9 A. I don't know, because I don't know what
10 their control process was.
11 Q. I'm just asking at the city council meeting.
12 A. That's what I'm saying. I don't know what
13 exact process led to the presentation of the financials
14 to the council for approval. I do know parts of it, the
15 yellow sheets. There are a number of other things that
16 come forward. Since then the City has formed a finance
17 committee to get more into --
18 Q. And I'm not asking for-behind-the-scenes
19 knowledge. I'm asking about a typical city council
20 meeting. The city council shows up, the city
21 treasurer -- tell me if I'm wrong -- has a packet of
22 expenditures that she at the time would present to the
23 city council and say, I've reviewed these, they're
24 accurate, they're legitimate, and now I'm asking to you
25 approve it?

Page 74

1 MR. NAYLOR: Object to the form.
2 Foundation, compound.
3 THE WITNESS: I think that the treasurer
4 would respond -- is presenting what they have determined
5 is accurate, the numbers are accurate.
6 BY MR. SWARTZ:
7 Q. That's all I was asking. It was the city
8 treasurer who would present those. Right?
9 MR. NAYLOR: Object to the form.
10 BY MR. SWARTZ:
11 Q. Would present the expenditures to the city
12 council?
13 MR. NAYLOR: Object to the form.
14 THE WITNESS: My experience is that the
15 treasurer presents and certifies that the numbers are
16 accurate.
17 BY MR. SWARTZ:
18 Q. Do you recall a period of time when
19 Mayor Willich had determined that Sharon Hammer had done
20 nothing wrong, and brought her back on? She was
21 reinstated?
22 A. Yes. Sure. I remember that.
23 Q. And all of a sudden she was put back on
24 administrative leave?
25 A. Yeah. I do remember these things happening,

Page 75

1 but because they were administrative in nature, I had no
2 direct involvement with them, so I didn't discuss them.
3 Q. Was putting her back on administrative leave
4 discussed in executive session?
5 A. I don't know if it was discussed, or if it
6 was just done. As I reiterate, the council has no
7 authority to do anything like that. That's all
8 administrative responsibility. We cannot direct the
9 mayor to do that to an employee who is not an official
10 of the City.
11 Q. At the time that you consented to the
12 termination of Ms. Hammer's employment, did you believe
13 Ms. Hammer to have done anything wrong?
14 A. No. I have no data to support that at that
15 point in time.
16 Q. In your mind they were still just
17 allegations?
18 A. Still allegations. My consent was based on
19 the concern of the mayor that he could not work with
20 Ms. Hammer. That was the basis of my consent.
21 Q. Do you recall the City issuing a press
22 release after terminating Ms. Hammer's employment?
23 A. I remember there was a press release. I
24 can't remember the contents of it. I know I had nothing
25 to do with the press release.

Page 76

1 Q. Did the city council ever approve use of
2 City funds for publishing an article about Sharon
3 Hammer, or an ad about Sharon Hammer, in the Mountain
4 Express?
5 A. I did not approve anything. I wasn't asked
6 to approve anything.
7 Q. Do you have an understanding of why
8 Ms. Hammer was placed back on administrative leave after
9 Mayor Willich had found her to have done nothing wrong
10 and reinstated her employment?
11 MR. NAYLOR: Object to the form. Compound,
12 and foundation.
13 THE WITNESS: I don't recall the specifics
14 of that process of going off and then going back on
15 administrative leave, and what the thought processes
16 were behind that. I just don't remember it. It was
17 administrative, and I was, at best, somebody who would
18 be consulted, and I don't even remember being consulted
19 on that.
20 BY MR. SWARTZ:
21 Q. What other executive sessions do we have in
22 Exhibit 1, if you can tell?
23 A. We have the November 11th, and then it goes
24 to the 15th of December, then the 10th of January, and
25 then the 16th of February, and then the 22nd of March,

Page 77

1 which has an executive session, but you have in
2 Exhibit 1 the non-executive session portion of notes,
3 but you also have the executive session notes.
4 MR. NAYLOR: There's the date there.
5 THE WITNESS: Yeah. That's the 26th of
6 March, but that's a work session for council priorities.
7 The administrative job description, which was not an
8 executive session, nor was the 28th of March. The 9th
9 of April, I didn't say whether there was an executive
10 session. It was a special city council meeting where
11 we're talking to law firms that would be the
12 intermediary between the forensic auditor and the City,
13 and we spoke with Hawley Troxell, Moffatt Thomas, and I
14 think -- I vaguely remember a third one, but I didn't
15 take notes, or there wasn't a third one, and I can't
16 remember whether this was in executive session or not.
17 We'd have to look up the 9th of April.
18 Generally there's no reason for it to be,
19 because we're just interviewing them to serve a function
20 for a fully public process of a forensic audit.
21 BY MR. SWARTZ:
22 Q. Do you recall what period of time Michelle
23 Frostensen was alleging Sharon Hammer had misused City
24 funds?
25 A. Period of time?

Page 78

Page 80

1 Q. I know she brought allegations forward in
2 November 2011, but what was the look-back period, do you
3 recall?

4 A. Well, if you go back to my notes, she was
5 looking back as far as '08, apparently, because she has
6 a note here in July of '08 that there were 40 hours of
7 vacation that Sharon had taken, so I would say back to
8 2008.

9 Q. Did you ever ask why Michelle Frostensen
10 waited so long to bring those allegations forward?

11 MR. NAYLOR: Object to the form.

12 THE WITNESS: I did not ask her that
13 question.

14 BY MR. SWARTZ:

15 Q. Do you have any idea why she chose to go all
16 the way back to 2008?

17 MR. NAYLOR: Object to the form. Calls for
18 speculation.

19 THE WITNESS: The answer is, I don't know,
20 nor could I speculate.

21 BY MR. SWARTZ:

22 Q. Do you recall allegations that Ms. Hammer
23 had falsified public records ever being discussed in
24 executive session?

25 A. No.

1 Q. Do you have any recollection of the city
2 council authorizing Mr. Ribi to disclose what transpired
3 in an executive session to his personal attorney, Keith
4 Roark?

5 MR. NAYLOR: Object to the form.
6 Foundation.

7 THE WITNESS: I don't recall approving
8 anything that had to do with informing anybody outside
9 those present in the executive session and those that
10 were directly impacted by the executive session to be
11 informed.

12 BY MR. SWARTZ:

13 Q. Other than allowing Sharon Hammer to be
14 presented with the allegations that we talked about
15 earlier when Mayor Willich and Adam King came to her and
16 presented her with the allegations and gave her a chance
17 to admit or deny them, did the city council discuss
18 giving her an opportunity to respond to the allegations,
19 present her own data, anything along those lines?

20 A. That was my expectation, that our advice at
21 the time was to talk to Sharon about the allegations and
22 get a response, and probably the response would be,
23 Well, it's not true, and this is why.

24 That was my expectation that the council --
25 not council, but the mayor would receive this, and the

Page 79

Page 81

1 Q. Was it ever discussed in executive session
2 whether Michelle Frostensen should be investigated for
3 the approval of these expenditures that were now being
4 characterized as being inappropriate?

5 A. I don't remember discussing that. There was
6 an ongoing investigation, so I personally didn't have
7 the data to give any direction there.

8 Q. Do you recall whether the city council ever
9 authorized Nils Ribi to disclose what took place in an
10 executive session in the public record?

11 MR. NAYLOR: Object to the form.
12 Foundation.

13 THE WITNESS: My recollection is we would
14 never -- I would never approve of that. At the time I
15 felt like the executive sessions were to be private. I
16 later found out, in my education with the attorney
17 general, that they depend on things leaking out.

18 BY MR. SWARTZ:

19 Q. They depend on things leaking out of
20 executive session?

21 A. They stated -- I was surprised. They said
22 certain things should be leaked. They said that. I
23 couldn't believe it. I still don't believe it. I don't
24 think it's correct, but that's my opinion, it's not the
25 opinion of the attorney general.

1 mayor could decide how he would interact with the
2 council on that one, on those responses. But I never
3 was exposed to any response, written, other than the
4 verbal denial of charges of all allegations. That was
5 what I was informed about.

6 Q. Did you ever observe Mr. Ribi interact with
7 Ms. Hammer in a way that you believe was -- let me ask
8 it this way. Did you ever see Nils Ribi raise his voice
9 to Sharon Hammer?

10 A. When you say raise his voice, I mean, what
11 do you mean by that? Because it could either mean -- it
12 could mean a number of things. What exactly do you
13 mean?

14 Q. Raise his voice beyond normal speaking
15 level.

16 A. For Mr. Ribi, no. His speaking level was
17 all very -- at a high volume. That's the way he speaks.

18 Q. Did you ever see Mr. Ribi approach
19 Ms. Hammer in a threatening way?

20 A. I have not.

21 Q. Do you have any idea when Mayor Briscoe made
22 the decision that he wanted to terminate Ms. Hammer's
23 employment?

24 A. As I said earlier, I had an informal, brief
25 conversation where he said he had great difficulty

Page 82

1 working with her, and then we had executive session
2 where he was asking for our consent to terminate the
3 contract.

4 Q. It was in executive session, or it was done
5 in the public portion of the meeting?

6 A. The consent was -- we can only vote in
7 public session. It's illegal to vote in executive
8 session. So the vote was in the public section, but the
9 discussion, his reasons for wanting to terminate the
10 contract was in executive session.

11 Q. Tell me about his reasons.

12 A. That he had great difficulty working with
13 her, and that he thought it would be best if we moved
14 on. Best for everyone.

15 Q. Do you recall anything else from that
16 executive session?

17 A. No. That was basically the subject of it.

18 Q. Did anybody disagree with his recommendation
19 for terminating her employment?

20 A. Not that I remember. Based on each
21 individual had their reasons why they were consenting.
22 Mine was that he could not work with her. I couldn't
23 further, nor would I want to, find out all the details
24 of that. He's just telling me as a manager he can't
25 work with this person, will you please consent so that I

Page 83

1 feel comfortable terminating the contract.

2 Q. What were the other council members' reasons
3 for consenting?

4 A. I wouldn't know.

5 Q. They weren't discussed?

6 A. I mean, I'd have to go and ask them, what
7 was your reason in the end? Who knows for certain. I
8 can't say. It's total speculation on my part.

9 Q. It wasn't discussed?

10 A. No. Not in a direct way.

11 Q. Not in a direct way?

12 A. Nobody said, I am doing this for this
13 reason. There was a general discussion, and then there
14 was a vote in the public part of the session.

15 Q. Have you ever come to learn of any act of
16 misconduct that Ms. Hammer engaged in during her
17 employment?

18 MR. NAYLOR: Object to the form.

19 THE WITNESS: I'm not remembering the
20 details of the investigative reports as it relates to
21 Sharon. I'd have to review those reports to be able to
22 answer that question. That's what I'd have -- what I
23 say on that.

24 BY MR. SWARTZ:

25 Q. And I'm not asking for the details. I'm

Page 84

1 just curious if you have any personal belief that Sharon
2 did anything wrong during her employment.

3 A. You know, it comes down to what is wrong,
4 and I'm reticent to be a judge of that, so I just do not
5 have a position, without -- I'm a database person. I
6 don't have the data in front of me, and I can't feel
7 comfortable saying yes, particularly yes to that
8 question, without the data in front of me.

9 Q. So as you sit here today you have no
10 recollection of Ms. Hammer having done anything wrong as
11 an employee of the City of Sun Valley?

12 A. Like I said, it depends on what's considered
13 wrong, and I'd need to review that.

14 Q. Do you have any recollection of Ms. Hammer
15 having misused City funds?

16 A. Not that I could say right now.

17 Q. Did she misuse City property?

18 A. I would, once again, have to review the
19 reports where the data lies on these issues. A lot of
20 this, for me, was put aside when the termination --
21 mentally was put aside when the termination occurred.

22 Q. Meaning you forgot about it after her
23 employment was terminated?

24 A. It wasn't something that I was thinking
25 about anymore. It had been a while, so I would have to

Page 85

1 review the reports and decide, yes, that was wrong, and
2 this was okay, or whatever the case may be. I wouldn't
3 want to speculate on that. That would be unfair.

4 Q. Do you have any recollection of disagreeing
5 with anything that was in the investigative report?

6 A. No. Because I'm ignorant of the
7 administration of the City. It wasn't part of my job,
8 and it was all about the administration of the City.

9 Q. Do you recall Kelly Ek filing a tort claim
10 against the City of Sun Valley?

11 A. I was informed that a tort claim had been
12 filed.

13 Q. Do you know what happened to resolve that?

14 A. No. I was informed that a settlement had
15 been reached. I had no involvement whatsoever.

16 Q. Would that be the same with respect to
17 Michelle Frostensen's tort claim that she filed?

18 A. That's correct.

19 MR. SWARTZ: I think, with reserving the
20 right to come back once we get our privilege log, and
21 nonresponsive log, I think we can wrap it up for today.
22 Mr. Naylor may have some questions for you.

23 MR. NAYLOR: Let's take a quick break.
24 (A Break Was Taken.)
25 ///

Page 86

1 EXAMINATION
2 QUESTIONS BY MR. NAYLOR:
3 Q. Back on the record. Mr. Youngman, at the
4 November 14th, 2011 executive session, do you recall
5 another -- another attorney being present by phone?
6 A. Yeah. There was an attorney from Hawley
7 Troxell, an employment specialist. I think his name was
8 Brad Miller.
9 Q. So on November 14th there was the -- at that
10 point in time you had this letter from Mr. Donoval that
11 he had delivered to your home on November 13th.
12 Correct?
13 A. Yes. My recollection was November the 12th,
14 but as I've demonstrated today, my memory is really
15 defective.
16 Q. I've got it right here. It's dated
17 November 12, 2011 Timeline 008.
18 A. Right.
19 Q. And it says at the top, "In contemplation of
20 litigation." Is that correct?
21 A. Yes, it does.
22 Q. And you've got an employment lawyer from
23 Hawley Troxell on the phone on November 14th as well,
24 and then there was a discussion to authorize
25 Mayor Willich and Mayor Elect Briscoe to retain an

Page 87

1 investigator. Correct?
2 A. Yes.
3 Q. So what were all of the factors that went
4 into the discussion of making the determination to hire
5 an independent investigator?
6 A. From my personal perspective, the primary
7 was to get facts and find out exactly what was going on,
8 if anything. Secondly, obviously we had the threat
9 of litigation in front of us, so it was important that
10 we did have a very proper independent investigation of
11 the allegations, so that there would be no questioning
12 of the motives behind that, just because of much of
13 what's written in this letter.
14 So for me, those were the primary factors
15 involved in thinking that was the best approach. But
16 for me it was primarily the getting of facts, getting of
17 the data, ferreting out exactly what is and isn't the
18 case.
19 Q. And on January 19th at the city council
20 meeting, when the council voted, as you put it, to
21 consent to the termination of Sharon Hammer's employment
22 contract, was Jim Donoval present at that meeting?
23 A. Yes, he was.
24 Q. And after the vote was taken, did you
25 witness Mr. Donoval have any -- make any comment to

Page 88

1 Mayor Briscoe about that situation?
2 A. Yes. After the meeting concluded, Jim came
3 up to the table, got Mayor Briscoe's attention, offered
4 his hand, shook hands, and said, You've done the right
5 thing.
6 Q. And what was his demeanor like, or what did
7 you take away from that?
8 A. Very friendly, and Mayor Briscoe was
9 somewhat taken aback. That's my memory of it. And Jim
10 said, No, I really do mean this, you've done the right
11 thing.
12 MR. NAYLOR: No further --
13 BY MR. NAYLOR:
14 Q. Oh, in what -- were you aware at the time of
15 the consent to terminate her contract, was that without
16 cause?
17 A. It was only without cause.
18 Q. And were you aware of how that impacted her
19 agreement with the City, a termination of her without
20 cause?
21 A. Meaning?
22 Q. What was the benefit to her, Sharon Hammer,
23 to terminate without cause?
24 A. I remember it being beneficial. I just
25 don't remember what it is.

Page 89

1 MR. NAYLOR: Nothing further.
2 MR. SWARTZ: I have nothing further either.
3 MR. NAYLOR: We'll read and sign. You can
4 send it to me.
5 (Deposition Concluded at 11:55 p.m.)
6 (Signature Was Requested.)
7 * * * * *

REPORTER'S CERTIFICATE

I, DIANA KILPATRICK, CSR No. 727, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
29th day of May, 2014.

Diana Kilpatrick

DIANA KILPATRICK, CSR, RPR
Notary Public

Hailey, Idaho 83333

My Commission expires January 13, 2017

CHANGE SHEET FOR ROBERT YOUNGMAN

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WITNESS SIGNATURE _____

EXHIBIT 28
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R.)
DONOVAL, husband and wife,)
 Plaintiffs,)
 vs.) Case No. 1:13-CV-211-EJL
CITY OF SUN VALLEY; NILS RIBI, in his)
individual and official capacity; and)
DEWAYNE BRISCOE, in his individual)
and official capacity,)
 Defendants.)
_____)

DEPOSITION OF FRANZ M. SUHADOLNIK
MAY 21, 2014

REPORTED BY:

JAHNENE ADMIRE, CSR No. 760,

Notary Public

Page 2

Page 4

1 THE DEPOSITION OF FRANZ M. SUHADOLNIK was
2 taken on behalf of the Plaintiffs at the offices of
3 Office Club, 160 2nd Street East, Ketchum, Idaho,
4 commencing at 9:06 a.m. on May 21, 2014, before Jahnene
5 Admire, Certified Shorthand Reporter and Notary Public
6 within and for the State of Idaho, in the above-entitled
7 matter.

8 APPEARANCES:

9 For Plaintiffs:

10 Jones & Swartz, PLLC
11 BY ERIC B. SWARTZ
12 1673 W. Shoreline Drive, Suite 200
13 Boise, Idaho 83701

14 For Defendants:

15 Naylor & Hales, PC
16 BY KIRTLAN G. NAYLOR
17 Banner Bank Building
18 950 W. Bannock, Suite 610
19 Boise, Idaho 83702

20
21 ALSO PRESENT: Nils Ribi
22
23
24
25

1 FRANZ M. SUHADOLNIK,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:

4 EXAMINATION

5 QUESTIONS BY MR. SWARTZ:

6 Q. Please state your legal name.

7 A. Franz M. Suhadolnik.

8 Q. Mr. Suhadolnik, you understand that you have
9 just been issued and have accepted the oath?

10 A. (The witness nods.)

11 Q. Is that a yes?

12 A. Yes. Excuse me. I have a habit of shaking my
13 head.

14 Q. We're going to talk about both of our bad
15 habits here in just a second. You understand that a
16 transcript's being made of everything that is said here
17 today?

18 A. Yes.

19 Q. Do you understand that the testimony that you
20 are giving carries the same force and effect as
21 testimony given in a court of law?

22 A. Yes.

23 Q. A couple of helpful hints for you and I to
24 make the most accurate transcript possible. One, would
25 be to have you answer audibly. No head shakes.

Page 3

Page 5

1 I N D E X

2 TESTIMONY OF FRANZ M. SUHADOLNIK

3 Examination by Mr. Swartz

4 Examination by Mr. Naylor

5 Further Examination by Mr. Swartz

PAGE

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7 E X H I B I T S

8 NO. DESCRIPTION

PAGE

9 (No Exhibits Marked.)
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1 A. No head shakes. Okay.

2 Q. Yes, no --

3 A. She can't record it.

4 Q. -- or a narrative as the question may require.
5 Okay?

6 A. I understand.

7 Q. If I ask a question that you do not
8 understand, please ask me to rephrase it. Okay?

9 A. Okay.

10 Q. If you do answer a question, it will be
11 understood that you understood the question. Okay?

12 A. Right.

13 Q. And then let's also try to refrain from
14 talking over one another. Allow me to finish my
15 question before you begin your answer. And I will
16 certainly endeavor to allow you to finish your answer
17 before I ask my next question. Okay?

18 A. I hope so.

19 Q. If at any time during your deposition today
20 you realize that something you said needs to be
21 clarified or something you said was not accurate, stop
22 me, and let's get it corrected on the record today.

23 Okay?

24 A. Okay.

25 Q. You are here pursuant to a subpoena that was

Page 6

1 issued to you. And I'm handing you a copy of your
2 subpoena. Have you seen that before today?
3 A. I'm sure I have, yes.
4 Q. And it asks you to bring with you materials
5 that are responsive to the category listed in the
6 subpoena. Did you have an opportunity to look for
7 materials that were responsive to the subpoena?
8 A. I believe so.
9 Q. And you brought in a stack of materials with
10 you today. And as I've flipped through them, they are
11 memorandums, letters, and pleadings in lawsuits that you
12 received after you were elected as a city council member
13 to the City of Sun Valley through at least your swearing
14 in; is that correct?
15 A. It was -- all the documents I have there were
16 received before I was sworn in.
17 Q. And you didn't have anything in your
18 possession after you were sworn in?
19 A. No, not to my knowledge.
20 Q. No notes from executive committee meetings?
21 A. I don't take notes in executive committee
22 meetings.
23 Q. Any notes from public meetings?
24 A. Not to my knowledge.
25 Q. Any emails?

Page 7

1 A. I searched, and I could not find any.
2 Q. Okay.
3 A. But I have changed computers and so forth
4 since then. But to my knowledge, no.
5 Q. As a subpoenaed nonparty to a lawsuit, you're
6 entitled to a witness fee check. I'm handing you your
7 check for your statutory witness fee of \$40.
8 You understand that Kirt Naylor represents the
9 City of Sun Valley, as well as Dewayne Briscoe and Nils
10 Ribi in lawsuits that are being brought by Sharon Hammer
11 and James Donoval?
12 A. I do.
13 Q. Do you understand that you have the right to
14 have your own personal attorney present for this
15 deposition?
16 A. I didn't, but I do now.
17 Q. Do you have any desire to stop the deposition
18 and reschedule for a day where you can have your private
19 attorney available?
20 A. No. I'll accept Mr. Naylor.
21 Q. Did you do anything to prepare for your
22 deposition today?
23 A. Not really, spoke briefly with Mr. Naylor and
24 went through this material, but not thoroughly. I just
25 -- I made sure that this was what I had, so forth.

Page 8

1 Q. Did you review any of it?
2 A. Briefly. As you can see my written markings,
3 I reviewed it thoroughly at the time it was presented to
4 me.
5 Q. Are the red markings at the time that it was
6 presented to you and the black marks were made at a
7 different time?
8 A. Not necessarily.
9 Q. Is there any magic between the black ink --
10 A. No.
11 Q. -- and the red ink?
12 A. No, just . . .
13 Q. When were you elected as a city council
14 member?
15 A. November of 2011.
16 Q. Are you still a sitting member of the council?
17 A. Yes.
18 Q. From the time that you've taken your position
19 as a city council member, have you come to an
20 understanding of what the city council's role is for the
21 city?
22 A. It's a learning process, and I'm getting
23 there.
24 Q. What is your understanding of what the city
25 council does for the city?

Page 9

1 A. The city council, for the most part, controls
2 the finances of the city and rules on land use issues,
3 et cetera. In our form of government, the city's
4 council is not a major force. That would be the mayor.
5 Q. What is your -- and what is the understanding
6 that you've come to have about the mayor's authority?
7 A. The mayor's authority, in our form of
8 government, is quite extensive.
9 Q. And would it cover personnel issues?
10 A. Most personnel issues.
11 Q. Are there personnel issues that you believe
12 fall outside of the purview of the mayor's authority?
13 A. I think with the exception of the city
14 officers, which are designated by state statute, the
15 mayor has complete control over other city personnel.
16 Q. Would that include the city administrator?
17 A. I don't believe the city administrator is a
18 city officer by state statute.
19 Q. So the governor -- the mayor would have
20 control over personnel issues related to the city
21 administrator?
22 A. That's my understanding.
23 Q. During your time as a city council member,
24 have you come to understand what the role of the city's
25 treasurer is?

Page 10

1 A. To some extent, yes.
2 Q. What's that understanding?
3 A. Well, the city treasurer is a designated city
4 officer and responsible for the finances for the city.
5 And by state statute, the city treasurer has to sign
6 off, under oath, on all payables paid by the city and
7 claims against the city.
8 Q. Were you asked to weigh in on the termination
9 of Sharon Hammer's employment?
10 A. The mayor, as I recall, asked council people,
11 the council members, to be involved and to -- which as I
12 understand, he didn't have to, but he did. And the
13 mayor often extends that courtesy to council members on
14 various issues which he would not be bound to by state
15 statute or by city ordinance, is my understanding.
16 Q. Do you recall when the mayor came to the city
17 council to discuss Sharon Hammer's employment?
18 A. Not exactly, no.
19 Q. Do you recall whether it was in an executive
20 session, public meeting, some other type of meeting,
21 email, telephone call?
22 A. It was in a meeting. It wasn't by a telephone
23 call.
24 Q. It was in a meeting?
25 A. Yes.

Page 11

1 Q. Was it in an executive session?
2 A. I don't think so, but it could have been. I'm
3 not sure.
4 Q. Do you recall where the meeting was held?
5 A. It was held in city hall.
6 Q. And you don't recall a date?
7 A. No.
8 Q. Did you receive advance notice of what the
9 topic of that meeting was going to be?
10 A. I don't recall that either. You have to
11 understand the state of flux the city was in at that
12 time, and the amount of material that was being dumped
13 on me, who was a neophyte in this business.
14 Q. And you just pointed to all the materials
15 related to Sharon Hammer. Were there other things going
16 on other than an issue with Sharon Hammer that was being
17 dumped on you?
18 A. Not in that period of time, because we -- I
19 had no knowledge of what was going on in the city itself
20 at that period of time. The only knowledge I had of
21 what was happening between Sharon Hammer and the city
22 was provided to me by the Donovals. And that was for a
23 period of two months.
24 Q. And that's this stack of paper that you
25 brought with you today?

Page 12

1 A. Right. Yes.
2 Q. And that would include information about
3 Sharon Hammer's complaints about Nils Ribi's conduct
4 toward her?
5 A. That was given -- to some extent, that was
6 given to me verbally by the Hammers, Ms. Hammer and
7 Mr. Donoval, in my home.
8 Q. Along with letters that outline --
9 A. Yes. They presented me with that. Hand
10 delivered it to me.
11 Q. And did they discuss anything else with you
12 when they met?
13 A. When Mr. Donoval and Ms. Hammer first appeared
14 at my door, I had no idea why they were there. I had
15 known them, but not socially, never mingled socially
16 with them, had a fondness for them. I supported Mr.
17 Donoval's campaign for state senator, admired his
18 tenacity in doing so. They appeared at my door one
19 November evening with a brown envelope in their hand. I
20 had no idea why they were there.
21 Q. Did they explain to you why they were?
22 A. They handed me -- they said, "Would you read
23 this?"
24 And I said, "Come in."
25 And they said, "No, we don't want to come in."

Page 13

1 I said, "Please, come in."
2 So they came in. And we sat down, and we
3 discussed it. That was my first exposure to it.
4 Q. And your discussion included Sharon Hammer's
5 complaints about Nils Ribi; correct?
6 A. Yes.
7 Q. Did your discussion also encompass allegations
8 of misconduct by Sharon Hammer?
9 A. No. Sharon Hammer -- they offered no -- I
10 mean, nothing that -- they gave their side of the story.
11 Q. Did their side of the story include the fact
12 that Nils Ribi and Michelle Frostenson were making
13 allegations that Sharon Hammer engaged in misconduct?
14 A. I believe that's in some of the documentation.
15 Q. What was your takeaway understanding from that
16 November evening meeting with Sharon and Jim?
17 A. When you hear it -- like I say, I was -- I had
18 personal -- not a personal relationship -- but I knew
19 them. They had been -- always been courteous to me.
20 Sharon had spent some time with me when I was -- first
21 announced my candidacy, with the mayor's permission, to
22 explain the budget to them, and so forth. I had nothing
23 but good relations with them. And I was -- of course,
24 when you get one side of the story for several weeks,
25 you, of course, sympathize with their position.

Page 14

1 Q. What do you mean when you received one side of
2 the story for several weeks?

3 A. This is it.

4 Q. Okay.

5 A. Yeah. I was not allowed into anything that
6 was going on in city hall.

7 Q. Not until you were sworn in?

8 A. Not till I was sworn in.

9 Q. So any meetings that you would have attended
10 on the other side of the story would have occurred after
11 January of 2012?

12 A. Right.

13 Q. Do you recall what Mayor Briscoe discussed
14 with the city council about his desire to terminate
15 Sharon Hammer's employment?

16 A. Not exactly. But it was my understanding at
17 the time, and still is, that the city supervisor serves
18 at the pleasure of the mayor. And it's not unusual for
19 mayors to want to bring in people that they think they
20 can work with, which includes the fire chief, the police
21 chief, et cetera. I believe that the city council has
22 only jurisdiction over the non -- the people other than
23 in those positions, unless the mayor brings them into
24 it. That was my understanding at the time.

25 Q. And I need you to help me understand just a

Page 16

1 taking office and the termination of Sharon Hammer's
2 employment involve any discussions about that misconduct
3 that she was alleged to have engaged in?

4 A. Possibly, but I don't recall specifically,
5 because we were getting information from all kinds of
6 sources. The ex-mayor was active in providing
7 information unsolicited.

8 THE COURT REPORTER: Did you say "unsolicited"
9 or "solicited"?

10 THE WITNESS: Unsolicited. For the most part.

11 Q. (BY MR. SWARTZ) This is a December 27, 2011,
12 memorandum to Mayor Willich and the Sun Valley City
13 Council from Sharon Hammer. It's the first page of what
14 you brought today. And there's a notation at the top
15 right-hand corner that says, "What would have to happen
16 for Mayor Briscoe to fire Sharon?"

17 A. Right.

18 Q. Do you see that?

19 A. Yeah.

20 Q. Can you tell me about that comment?

21 A. That was my question. As I recall, Mayor
22 Willich suspended Sharon Hammer. Sharon Hammer was then
23 reinstated by Mayor Willich. When Mayor Briscoe took
24 office, Mayor Briscoe suspended Sharon Hammer. So my
25 question here is, if he wanted to terminate her, what

Page 15

1 bit more. Did he explain to the city council why he was
2 looking for the city council's consent to his proposed
3 termination of Sharon Hammer's employment?

4 A. There was numerous discussions. And there was
5 also an education process for me. But my -- at that
6 time my knowledge was that the mayor did not need our
7 consent, if he so chose. But as a courtesy, it's a good
8 idea for a mayor to bring in the city council on these
9 matters.

10 Q. Did Mayor Briscoe describe, explain, elaborate
11 upon why he wanted to terminate Sharon's employment?

12 A. Not to me personally. And there was so many
13 meetings in there that I can't recall what took place at
14 any specific meetings. We had -- I believe we had 52
15 meetings of the city council in a period of six months.

16 Q. Did any of the meetings before the termination
17 of Sharon Hammer's employment include discussions about
18 misconduct that Ms. Hammer was alleged to have engaged
19 in?

20 A. I believe the Hammers told me the misconduct
21 she was alleged to have engaged in, and they were heavy
22 on alleged, but they explained that to me. Because we
23 had long conversations at my house on three or four
24 occasions.

25 Q. Did any of the executive sessions between you

Page 17

1 would have to happen.

2 Q. Did you have your question --

3 A. That was the question for me, that I asked
4 myself in making these notations.

5 Q. Did you have your question answered by anyone?

6 A. I don't know if it was answered by anyone.
7 But we're very restricted on what we do by the state
8 open meetings law in talking with other members in the
9 council, and so forth. The present members of the
10 council weren't too helpful to me in becoming involved
11 in this thing or acquainted. It was sort of a
12 learn-as-you-go. And so at some point, either through
13 my research or some other way, I came to the conclusion
14 that the mayor had the right to terminate the city
15 supervisor, according to her contract, as the contract
16 was defined to me by the city attorney.

17 Q. Who was the attorney that you spoke to about
18 the contract?

19 A. I believe it was the city attorney.

20 Q. Who was that?

21 A. Adam King.

22 Q. And did you go to Adam King individually or
23 was this a meeting?

24 A. It might have been -- it wasn't
25 individually -- it might have been prior to a council

Page 18

Page 20

1 meeting, which I often will ask Adam King questions on
2 the way in to the council meeting about something we're
3 going to discuss in council.

4 Q. I'll take that back from you so I can stick it
5 back with your stack of documents.

6 A. This all was a learning process to me.

7 Q. When you're saying "this all," this -- and
8 you're pointing to the stack of documents you brought
9 with you. Are you talking about Sharon's allegations
10 against Mr. Ribí and Mr. Ribí's allegations against
11 Sharon, is that the learning process?

12 A. Yeah, what was --

13 MR. NAYLOR: Object to the form.

14 Go ahead. Go ahead.

15 THE WITNESS: What was in there, the reason I
16 spent time on that, that was a learning process to me.

17 Q. (BY MR. SWARTZ) You were catching up on
18 things that had transpired prior to you being sworn in?

19 A. Right.

20 Q. And what you were catching up on fell into
21 these -- the two categories we've talked about, Sharon's
22 complaints against Mr. Ribí, and Mr. Ribí's allegations
23 of misconduct engaged in by Ms. Hammer; is that correct?

24 MR. NAYLOR: Object to the form. You keep
25 characterizing him as Nils Ribí's complaints, and they

1 Now, this is, as I understand, Mayor Willich's position,
2 too, that he gave permission. I can't give you
3 permission to go out and drive 35 miles an hour in a
4 30-mile zone nor can the local police chief. It's
5 either right or it's wrong. And that was her allegation
6 that -- to me, during conversations, that anything that
7 she did that was in violation of the personnel policy
8 she did with Mayor Willich's permission.

9 Q. Did you ever learn of any information
10 suggesting that Mayor Willich did not give her
11 authorization to do what she was alleged to have done?

12 A. I believe I read an affidavit by Mayor Willich
13 which said that he did give her permission. And,
14 therefore -- and he had the authority to give her
15 permission to do certain things in violation of the city
16 personnel policy.

17 Q. Did you ever come to know why Mayor Briscoe
18 put Ms. Hammer back on administrative leave after Mayor
19 Willich had determined that the allegations against
20 Ms. Hammer were unfounded?

21 MR. NAYLOR: Object to the form.

22 THE WITNESS: Repeat that.

23 Q. (BY MR. SWARTZ) Sure. Did you have an
24 understanding that when Mayor Willich brought --
25 reinstated Ms. Hammer, after the investigation into the

Page 19

Page 21

1 were Michelle Frostenson's complaints. But that's just
2 a distinction.

3 Q. (BY MR. SWARTZ) Allegations of misconduct
4 engaged in by Sharon Hammer, regardless of who's
5 alleging them, and Ms. Hammer's complaints of Nils
6 Ribí's conduct; are those the two things that you were
7 getting up to speed on?

8 A. Ms. Hammer never admitted to any allegation
9 that she had contained any misconduct.

10 Q. Sure.

11 A. And this is something I discussed with her,
12 personally, and asked her if there's anything that she
13 could possibly admit to. And she said, "No."

14 Q. Did she -- I didn't mean to cut you off.

15 A. Go ahead.

16 Q. Did she also relay to you that it was never
17 made clear to her exactly what the allegations of
18 misconduct were?

19 A. She said that -- as I recall, that anything
20 that she did that may have been misconduct, she was
21 given permission to do so by then Mayor Willich.

22 Q. Did you ever learn of any information contrary
23 to that statement?

24 A. Well, if you read the city personnel policy,
25 you cannot give people permission to do what is wrong.

1 allegations against her, that he had found that she had
2 done nothing wrong?

3 A. No. I -- he didn't, but we were waiting the
4 -- I was waiting for the Patti Ball report.

5 THE COURT REPORTER: The what?

6 THE WITNESS: Patti, private investigator's
7 report.

8 MR. SWARTZ: Patti Ball was the name.

9 Q. (BY MR. SWARTZ) You did not have an
10 understanding that Mayor Willich had concluded, after
11 receiving the Patti Ball report, that Sharon Hammer had
12 not done anything wrong? And if there's too many double
13 negatives in that one, let me know.

14 A. My impression of Mayor Willich was that he was
15 covering his back side.

16 Q. Do you know why he reinstated Sharon Hammer?

17 A. I think that was his way of attempting to
18 vindicate himself of any involvement in what had
19 transpired in the city.

20 Q. And that's just your personal belief?

21 A. That's my very, very firm personal belief.

22 Q. Okay. Do you know why Mayor Briscoe put
23 Sharon Hammer back on administrative leave after Mayor
24 Willich had reinstated her?

25 A. Not exactly. Mayor Briscoe does not explain a

Page 22

1 lot of his actions to individual city council people,
2 nor should he.
3 Q. He did with respect to his decision to
4 terminate her employment; correct?
5 A. He explained to the city council people?
6 Q. Correct.
7 A. Why he wanted to terminate her?
8 Q. Right.
9 A. To some extent. But it was my impression at
10 that time that he had the right to do so. And I was not
11 going to get into a catfight with him over whether he
12 should or shouldn't.
13 Q. So tell me about what he shared with the city
14 council regarding his decision to terminate her
15 employment.
16 A. To some extent, I think it might have been
17 that he -- and I don't remember exactly that he thought
18 that he possibly couldn't work with her.
19 Q. Did he explain why?
20 A. Not in entirety.
21 Q. Did you ask?
22 A. I didn't press him on that.
23 Q. I understand he didn't explain in entirety.
24 But what did he explain?
25 A. Just that he didn't think that he would be

Page 23

1 able to work with her. And that's reason enough, given
2 her contract, as I understand it, and given what I know
3 about the city. You cannot have somebody that you don't
4 feel that you could work with.
5 Q. Did he ask for your consent to his decision to
6 terminate her?
7 A. He asked me if I would support him.
8 Q. And how did you respond?
9 A. I would have to think about it, because I was
10 in an education process there.
11 Q. How long --
12 A. I only got one side of the story.
13 Q. How long did you take to think about it?
14 A. Probably up till the night of the meeting of
15 -- to decide her termination.
16 Q. Her termination took place at the January 19,
17 2012, meeting?
18 A. Right.
19 Q. How long before that meeting did Mayor Briscoe
20 come to you and ask whether you would support his
21 decision?
22 A. I don't recall.
23 Q. A matter of days? Weeks?
24 A. Well, it had to be a matter of days, because I
25 was -- I was sworn in on the 12th, I think, of January.

Page 24

1 And nobody came to me before the 12th.
2 Q. So sometime between the 12th and the 19th --
3 A. Right.
4 Q. -- Mayor Briscoe approached you individually?
5 A. I don't recall whether it was individually or
6 in a meeting. As I said, we were having meetings fairly
7 frequently then.
8 Q. But it was a matter of days before the
9 January 19th meeting?
10 A. Had to be.
11 Q. While you were thinking about his proposition
12 of terminating Ms. Hammer's employment, did you review
13 any materials, speak to anyone, do anything to help you
14 process whether you would or would not support his
15 decision?
16 A. I possibly -- I think I clarified what her
17 contract was. And if I did clarify that, it must have
18 been with the city attorney. Okay. And number two,
19 what his jurisdiction was. And that was the two things
20 I clarified.
21 Q. So other than speaking with Adam King to get
22 clarification on the contract, do you recall speaking
23 with anyone else?
24 A. I might have, but I don't recall.
25 Q. Ultimately, did you give your consent at the

Page 25

1 January 19, 2012, executive meeting?
2 A. Yes.
3 MR. NAYLOR: Object to the form.
4 Q. And --
5 MR. NAYLOR: You called it an executive
6 meeting.
7 THE WITNESS: It wasn't.
8 MR. NAYLOR: It was an open meeting. I don't
9 know if you intended to ask it that way.
10 THE WITNESS: All decisions have to be --
11 we're very -- Mayor Briscoe is very, very careful about
12 the open meetings law. The open meetings law, in some
13 ways, frustrates the council, but it's the law. And if
14 a decision was made, it was made in open meeting.
15 Q. (BY MR. SWARTZ) Do you recall having a
16 January 19, 2012, executive session where not your vote
17 but your consent to the proposed termination of her
18 employment was asked for?
19 A. I don't recall the specific meeting, but it's
20 possible there was. It's possible that was discussed.
21 I think that would be a proper thing to discuss in
22 executive session because executive session allows
23 personnel issues to be discussed, but not decided.
24 Q. Once in the public form of the January 19,
25 2012, city council meeting, were you asked to vote on

Page 26

Page 28

1 the termination of Sharon Hammer's employment?
2 A. I believe we were.
3 Q. Do you recall how you voted?
4 A. I voted yes.
5 Q. Tell me your personal reasons for voting yes
6 to the termination of Sharon Hammer's employment.
7 A. As I say, I had a good relationship with the
8 Hammers. I knew what her contract called for. I
9 thought personally that she would be much -- serve
10 herself by taking her termination, her payment that she
11 was given, and leaving, and going -- moving on with her
12 life, unscathed. That would be my best advice to her.
13 That would have been the same advice to my daughter,
14 under the circumstances. Because Ms. Hammer at that
15 time I don't think her reputation had been tarnished at
16 all. Because it's not unusual for people to change city
17 supervisors. And the city would have -- in my case,
18 that would have ended it. And I believe I broached that
19 subject with the Hammers in my home.
20 Q. When do you believe her reputation was
21 tarnished?
22 MR. NAYLOR: Object to the form.
23 THE WITNESS: Personally, I think her
24 reputation has been tarnished by her.
25 Q. (BY MR. SWARTZ) How's that?

1 yes to terminate her employment that Sharon Hammer had
2 done anything wrong?
3 A. At that time?
4 Q. Correct.
5 A. Only allegations.
6 Q. Since the termination of her employment, have
7 you come to learn or come to believe that she had
8 engaged in the misconduct that was being alleged against
9 her?
10 A. To some extent, yes.
11 Q. And what is that extent?
12 A. It's based on the various reports: the city
13 private investigator's report, the forensic audit, the
14 attorney general's report, and the prosecuting
15 attorney's report.
16 Q. Can you recall what within those reports you
17 believe established that Ms. Hammer had actually engaged
18 in some misconduct?
19 A. I don't think that -- establish is -- can only
20 be established in the court of the law, as I understand
21 it. The Patti Ball report was not under oath.
22 THE WITNESS: Were any of those reports under
23 oath?
24 MR. NAYLOR: You have to go with your memory.
25 THE WITNESS: I don't think so. But the

Page 27

Page 29

1 A. Because all the allegations that have been
2 made against her would have never become public, as I
3 understand it, if she had accepted termination without
4 cause.
5 Q. Do you believe that she rejected a termination
6 without cause?
7 A. Yes.
8 Q. How do you believe that she rejected that
9 termination without cause?
10 A. By the conversations I had with her previous
11 to, that under no conditions would she resign, that she
12 had done nothing wrong.
13 Q. Before you voted yes to the termination of her
14 employment, did you understand that Sharon Hammer had
15 made requests to have an opportunity to learn fully
16 about the allegations against her and have an
17 opportunity to respond to those?
18 A. I do not. But my understanding of termination
19 without cause is that both people walk away without
20 damage to either party.
21 Q. Did you understand that Sharon Hammer wanted
22 to be heard in response to the allegations being --
23 A. I knew of no particular petition by her to the
24 council or anything to be heard.
25 Q. Did you believe that by the time you had voted

1 allegations were consistent and strong that there was at
2 the least numerous violations of the city personnel
3 policy.
4 Q. (BY MR. SWARTZ) Did you ever hear of anyone
5 making allegations that she had engaged in criminal
6 conduct?
7 A. The word -- to my knowledge, the word
8 "criminal" was never used.
9 Q. Since the termination of her employment, have
10 you come to believe that -- or have you come to know
11 that someone is alleging that she has engaged in
12 criminal misconduct?
13 A. My reading of the prosecuting attorney's
14 report was that there was allegations that he could have
15 prosecuted on but elected not to do so.
16 Q. I'm going to hand you, from your packet, a
17 November 12, 2011, letter from James Donoval to Mayor
18 Willich, and it CC's you on there, as well as sitting
19 city council members, and, also, freshly elected
20 Michelle Griffith, city council member. Do you
21 recognize that from the stack of materials you brought
22 today?
23 A. Yes.
24 Q. Do you see on page 4, top of the page, Mr.
25 Donoval is requesting that Ms. Hammer be provided with

Page 30

1 formal written notice of the charges being assessed
2 against her, disclosure of what supports those
3 allegations?

4 MR. NAYLOR: Hang on. Here's where are we.

5 MR. SWARTZ: Top of the page, one, two, three
6 -- four, in that -- three, sorry -- in that paragraph
7 there.

8 MR. NAYLOR: Yeah.

9 THE WITNESS: Yeah. Go ahead.

10 Q. (BY MR. SWARTZ) And also requesting a hearing
11 on the charges being assessed against her. Do you see
12 that?

13 A. I see that.

14 Q. And you received a copy of that letter?

15 A. Yes.

16 Q. Does that refresh your recollection of whether
17 Ms. Hammer was requesting an opportunity to have the
18 details of the allegations being alleged against her
19 and --

20 A. It obviously says that Ms. Hammer has
21 requested that.

22 Q. Did that come into or factor into any of the
23 discussions that you had as a city -- council city
24 member after you were sworn in?

25 A. Not that I recall.

Page 31

1 Q. I will take that back from you and stick it
2 back in your stack in the appropriate order.

3 Did you think that Ms. Hammer -- other than
4 just not walking away and insisting on a right to
5 respond to the allegations, did you think that Ms.
6 Hammer made any other mistakes prior to the vote to
7 terminate her employment?

8 A. Well, if you -- if you believe what you read
9 in the various reports, the answer to that would be yes.

10 Q. And what are those things?

11 A. If you believe what you're reading in the
12 reports.

13 Q. Okay.

14 A. Okay. For instance, the Patti Ball report
15 says there was no evidence of harassment by Mr. Ribí.

16 Q. Did you have an opinion about that conclusion?

17 A. I had no opinion at all because I was
18 completely out of the loop then. I knew Ms. Hammer was
19 claiming it. And I didn't discount the possibility.
20 But what is harassment? Patti Ball report, who's a
21 reputable private investigator, said, when we went over
22 the report with her, that there was no evidence of
23 harassment by Mr. Ribí.

24 Now, if Mr. Ribí went down to city hall and
25 asked that certain things be done, that's something I

Page 32

1 might do, too. Because it's frustrating as a council
2 person to be -- to be -- you're part of the -- part of
3 the system that will be faulted, and, yet, under our
4 form of government, you don't participate to that
5 extent. So it could be frustrating, too. I could
6 understand to Mr. Ribí. But Patti Ball report says
7 there was no harassment.

8 Q. So what other things, what other conclusions
9 did you see in the Patti Ball report that you believe
10 were mistakes made by Sharon Hammer?

11 A. Well, if you -- if the allegations are correct
12 -- and the same allegations are made in all four
13 reports -- then, obviously, she made some mistakes.

14 Q. Do you recall what --

15 A. Either that or she didn't know the city
16 personnel policies.

17 Q. Do you recall what the mistakes were?

18 A. One was the use of a city vehicle, the other
19 was that as a volunteer fireman she couldn't charge for
20 time spent as a volunteer and be on the city payroll at
21 that time. Now, as I said, these are allegations. They
22 haven't been proven. But they're in all four of the
23 reports. Not -- not managing the leave time and
24 vacation times of city employees. And that's all being
25 strictly done now. Strictly done.

Page 33

1 Q. You believe it was Sharon Hammer's job to
2 manage, track the leave time of all employees that
3 she's --

4 A. She's the city supervisor. Where does it
5 stop? Somebody has to be responsible for that.

6 Q. Anything else?

7 A. Not offhand. But if I had the documents in
8 front of me, there are -- they're numerous.

9 Q. Did you have these conclusions at the time
10 that you voted to terminate Sharon Hammer's employment?

11 MR. NAYLOR: Object to the form.

12 THE WITNESS: Not the conclusions, but they --
13 those were out there. And I sincerely thought at the
14 time, with some fondness for the Hammer -- Ms. Hammer
15 and Mr. Donoval, that they would be best just taking
16 their offer of termination without cause and \$60,000
17 bonus or payoff payment and going away. Now, that was
18 what my heart told me. My gut said if there's some
19 wrongdoing there, let's do it with cause.

20 Q. (BY MR. SWARTZ) Did you have any discussion
21 with your city council members or the mayor or anyone
22 else associated with the city about your gut feeling?

23 A. I well might have, but I don't recall exactly.

24 Q. Do you still have that gut feeling today?

25 A. Yes, since she didn't take the opportunity to

Page 34

1 take advantage of what I thought was the most favorable
2 solution to her.
3 Q. And that was to take the no cause termination,
4 the money, and just go away?
5 A. (The witness nods.)
6 Q. Is that a yes?
7 A. Yes.
8 MR. SWARTZ: Let's take a quick break.
9 (Recess was held.)
10 MR. SWARTZ: Back on.
11 Q. (BY MR. SWARTZ) Mr. Suhadolnik --
12 A. That's close enough.
13 Q. Close enough -- I'm going to hand you a
14 document that's marked as HAMMER 1718. Take a moment to
15 review that. Let me know when you're done.
16 A. Okay.
17 Q. Do you recognize that email?
18 A. I don't recall it, but what is, is.
19 Q. It looks like a June 11, 2012, email from you
20 to Jim Donoval? The top email.
21 A. Right.
22 Q. And you reference that there's a lot going on
23 in the city that frustrates you, and you'd love to be
24 put under oath. You're under oath here today. And I
25 would love to hear about all the frustrations that you

Page 35

1 were experiencing at the city.
2 A. You want -- how long do you want to be here?
3 Q. I would like to know about -- initially, any
4 frustrations you had that related to Sharon Hammer or
5 her employment.
6 A. I have always been my own boss since I got out
7 of the Army, which was many, many years ago.
8 Q. Thank you for your service.
9 A. You bet.
10 But other than that, I've never had to -- I've
11 made my own decisions, ran my own show, didn't have to
12 wait on other people to come along and so forth. So the
13 whole experience has been frustrating to me, been a
14 learning process, caused a lot of anxiety. I see things
15 happening that I may not approve of, but I'm limited in
16 what power I have over them. And that's frustrating to
17 me. I tend to be a controlling person. My wife
18 informed me that I would experience this, because she
19 had been a school administrator, and she knew how the
20 system works. The system frustrates me.
21 And at this time -- Mayor Willich is always
22 out there, stirring up things, to this day. And a lot
23 -- some of the things that he has done before and after
24 were extremely frustrating to me, too.
25 Q. Did any of those involve Sharon Hammer?

Page 36

1 A. I had the feeling -- did any of those involve
2 Sharon Hammer, yes, because the buck has to stop
3 someplace. He's the chief executive officer of the
4 city. And if he was giving Sharon Hammer permission to
5 do certain things that were in violation of city policy,
6 there was two people responsible: him for giving the
7 permission and Sharon Hammer for doing them. Because,
8 to me, city policy is sacrosanct. And that's the way we
9 operate the city now.
10 Q. So that frustrated you?
11 A. Yes.
12 Q. Anything else related to Sharon Hammer that
13 frustrated you?
14 A. I was possibly frustrated after talking with
15 her and after reading the documentation that she was in
16 a complete state of denial. I think -- I felt there had
17 to be something there, and I told her so. I said,
18 "Sharon, why don't you -- is there anything you can
19 possibly admit that you did wrong that would help ease
20 this situation through? Because that's a good way to
21 admit that you're wrong."
22 And she said, "No." I found that frustrating,
23 because I was trying to, at that time, be of help to
24 her.
25 Q. Did you have any frustration related to the

Page 37

1 investigations into the allegations being made against
2 Sharon Hammer?
3 A. The frustration I had is that Mr. Willich
4 hired the private investigator -- which was his
5 decision -- selected her, and then tried to denigrate
6 her report when it didn't turn out the way he possibly
7 hoped it would.
8 Q. He didn't agree with it?
9 A. He's tried to denigrate it completely.
10 According to him, Mr. Naylor coached Patti Ball, and
11 everything in there is bogus.
12 Q. And have you come to a conclusion as to his
13 allegations to that effect?
14 A. I think they're false.
15 Q. Is there anything that supports your belief,
16 or is that just your belief?
17 A. What supports my belief is that the other
18 reports say basically the same thing.
19 Q. The other reports? Which are?
20 A. The prosecuting attorney, the attorney
21 general, and the forensic audit. We, as a council,
22 voted for the forensic audit because we wanted to get to
23 the bottom of all these allegations. And we made great
24 -- went great effort to be certain that both the
25 attorney we hired and the forensic auditor we hired were

Page 38

Page 40

1 untainted.

2 Q. Did the prosecutor's report, the attorney
3 general's report, or the auditor's report comment on
4 whether Patti Ball's report was independent or, as Mayor
5 Willich had alleged, was directed by Mr. Naylor?

6 A. They didn't comment on the Patti Ball report.
7 I believe they gave their own independent position. But
8 they covered some of the same issues, many of the same
9 issues.

10 Q. Anything else that you're referring to in your
11 June 11th, 2012, letter that's frustrating to you that
12 involved Sharon Hammer?

13 A. This is subject to the RE, Kelly Eck
14 settlement. I was frustrated that we settled. I
15 thought that particular issue should have been defended
16 by the city.

17 Q. What about the complaint that was brought by
18 Michelle Frostenson? Were you frustrated by the
19 settlement of that complaint?

20 A. Not to the same extent because Michelle
21 Frostenson was protected by the whistle-blower laws, I
22 suspect. I think that there was, in my investigation of
23 the duties of the city treasurer, that she may have been
24 in violation of state statute. But I wasn't near as
25 frustrated because I was named in the Kelly Eck

1 made against her. But I could be wrong. But that was
2 my understanding.

3 Q. You think Sharon Hammer's allegations of Nils
4 Ribi's conduct arose after Michelle Frostenson and Nils
5 Ribi brought to light the alleged misconduct by Sharon
6 Hammer?

7 A. No. I know -- I know she made those
8 allegations prior to the time of my election, and so
9 forth. But I -- my understanding is that there's a
10 difference. There may not be, but that's my
11 understanding.

12 Q. Is that something that someone helped you come
13 to understand or that's just your personal belief?

14 A. My personal belief. I don't come and do what
15 other people want.

16 Q. I'm going to hand you a document marked
17 HAMMER 1725 and have you take a look at the top email
18 from you to Mr. Donoval, June 13, 2012. Do you see that
19 there?

20 A. Mm-hmm -- yes.

21 Q. Do you recognize that email?

22 A. No. But like I say, what is, is.

23 Q. The second sentence there is "The fate of the
24 city is in your hands." Do you see that?

25 MR. NAYLOR: Up here. This is you.

Page 39

Page 41

1 settlement as one of the people.

2 Q. Who harassed her?

3 A. Yeah. And I couldn't have been, in no way,
4 because the only time I saw Kelly Eck was when I went to
5 a council meeting. And I said hello and goodbye. That
6 was frustrating to me. But that's -- sometimes you're a
7 part of a group, and you take the same heat as the
8 entire group does.

9 Q. Were you asked to approve this Kelly Eck
10 settlement?

11 A. No.

12 Q. It just happened without your input?

13 A. Right.

14 Q. Even though you were a named party?

15 A. Even though I was a named party.

16 Q. You referred to Michelle Frostenson being
17 protected as a whistleblower. Did you have the same
18 understanding about Sharon Hammer's protection, in light
19 of her whistle-blowing with regard to Nils Ribi's
20 conduct?

21 A. My understanding was that there's a
22 difference, that Michelle Frostenson came forward, it
23 wasn't personal, she just reported what was going on in
24 the city; where Sharon Hammer's was more in defense of
25 what had transpired and what had -- the allegation s

1 THE WITNESS: Okay.

2 Q. (BY MR. SWARTZ) Do you see that?

3 A. Yes.

4 Q. What do you mean by that phrase?

5 A. Let me read this a minute. What I meant was
6 that was a -- if that was a true issue -- that was a bit
7 of a hyperbole on my part, I think -- but if there was
8 an issue like that, it was an issue that he would have
9 to address, that I would not be effective in doing so,
10 to my limited powers as a -- as a city councilman. And,
11 believe me, the powers are limited as an individual city
12 councilman.

13 Q. And you're talking about --

14 A. And what it was, what it pertained to, was
15 Kelly Eck's claim of harassment and so forth.

16 Q. Okay.

17 A. And that was -- that was very frustrating to
18 me.

19 Q. Why did you feel like the fate of the city was
20 in Jim Donoval's hands?

21 A. Well, as I explained, that -- my wording there
22 was a bit over the top -- but what I was getting at was
23 that if this issue was going be brought up and it was
24 pertinent, it was not something I could do; it was
25 something he would have to do.

Page 42

1 Q. Going to hand you a document marked as
2 SH-TIMELINE 656. Take a look at that. Let me know when
3 you're done.
4 A. I recognize this.
5 Q. Is this a letter that you wrote to Sharon
6 Hammer and Jim Donoval?
7 A. It is.
8 Q. And this is dated January 20, 2012?
9 A. Yes.
10 Q. That's the date after you voted to terminate
11 Sharon Hammer's employment?
12 A. Right.
13 Q. What was the purpose of writing this letter?
14 A. As I said, I had no personal animosity towards
15 the Donovals -- Mr. Donoval and Ms. Hammer. My
16 relationship with them had been good during the time
17 they spent in my house, discussing this. I felt great
18 empathy for them because I'd only heard one side of the
19 story. And I say here -- what I'm saying is, in
20 essence, is it's time to get on with your lives, go
21 away, take what you got, and get on with your life. And
22 I sincerely meant that. And I mentioned that my wife
23 was, too, because she sat in on some of the discussions
24 with the Hammers, so forth. And I sincerely believe
25 that. Sincerely believe that. And there was things

Page 43

1 beyond their control.
2 And, once again, I get back to this, the fact
3 that the mayor and the city runs the city. If the city
4 wasn't run right, he has some responsibility. Now, that
5 doesn't excuse Ms. Hammer's actions, if the allegations
6 against her are true. But someplace, somebody has to be
7 responsible. And so I wrote this letter in all
8 sincerity.
9 Q. The second line of the first paragraph you
10 write, "You got caught up in something that was not
11 entirely of your making, but, nonetheless, caught up you
12 were."
13 What are you referring to in that sentence?
14 A. The various allegations of misconduct and the
15 various reports, the fact that she said that Mayor
16 Willich gave her permission to do things that were in
17 violation of the city personnel policy. Should she, as
18 a city administrator, also been a member of the fire
19 department, I don't think so. We probably wouldn't
20 allow that now, things like that, which she was allowed
21 to get caught up in.
22 When I was in Korea, I went through five
23 company commanders. And the reason for -- and that was
24 in 16 months -- and the reason for that was it was a
25 medical company, and it should have been commanded by a

Page 44

1 medical company officer, medical officer. It was
2 commanded by an infantry officer because the commander
3 of the regiment wanted an infantry officer to command
4 the medical company. The infantry officer didn't want
5 to be commander of the medical company because that was
6 not good on his record; he wanted to command infantry
7 company. So I went through five company commanders.
8 Each one of them changed the tone of the company.
9 And the mayor changes the tone of the council.
10 So the mayor is ultimately responsible. But, also, the
11 city administrator has to have some responsibility. And
12 she can't do what she -- what -- just because the mayor
13 says sure, go ahead, that doesn't relieve her of
14 responsibility for her actions.
15 Q. During your time as a city council member,
16 have you come to understand who has authority to direct
17 the city administrator?
18 A. Yes. The mayor.
19 Q. Did you have that understanding at the time
20 that you voted to terminate Sharon Hammer's employment?
21 A. Yes. I had the understanding that the mayor
22 -- there's certain people the mayor could remove without
23 cause, just because he wanted to bring in people that he
24 felt he could work with, which makes sense. And it
25 makes sense to this day. And if the mayor came to me

Page 45

1 this day and said "I can't work with our present city
2 administrator," I'd say "Fine. Why?" I'd ask why,
3 because I think highly of our present city
4 administrator.
5 Q. Did you ask why when he stated that he
6 couldn't work with Sharon Hammer?
7 A. It was obvious why, because of all the
8 allegations going back and forth. And he didn't need to
9 explain to me. All he had to do was say "I can't work
10 with her." And that's enough.
11 Q. And, in your mind, it was because of all the
12 allegations of misconduct?
13 A. He -- we didn't go into that because the
14 process was to terminate Sharon without cause. And I
15 believe when you terminate without cause you don't raise
16 causes.
17 Q. As you understood the mayor and his intent to
18 terminate her employment, it was that he didn't feel
19 like he could work with her, and your understanding of
20 that was in light of the allegations?
21 A. No. It was -- he didn't explain to me. I
22 suspected it might be in light of the allegations. But
23 like I say, the mayor -- mayors do what they're going to
24 do in our form of government.
25 Q. Let's go back to 656, the second paragraph.

Page 46

1 You state, quote, I did the best I could for you, but my
2 options were limited and sometimes it is best to, quote,
3 throw in the towel, end quote, and move on. See that?
4 A. Mm-hmm.
5 Q. What are you referring to as doing the best
6 that you could for them?
7 A. Well, I didn't -- I certainly didn't go out of
8 my way to try to do anything negative to prevent her
9 from staying on. I thought it was strictly the mayor's
10 decision. I talked to them about moving on, getting on
11 with their lives, don't harm yourself, it's a pretty
12 good severance, happens all the time. And I tried not
13 to, in any way, bring up any of this material in council
14 meetings or anything like that.
15 And I personally thought that a great deal of
16 responsibility of what transpired in our city was the
17 fault of the mayor. And other city employees got caught
18 up in that, too. Because the CEO or the commander sets
19 the tone. In my office, I set the tone. The way I
20 dressed affected my employees. My ethics affected my
21 employees. So the head individual is the one who sets
22 the standards of the tone.
23 Q. Your reference to your options being limited,
24 is that you referring to your limitations as a city
25 council --

Page 47

1 A. Yes.
2 Q. -- member?
3 A. Definitely. Now, at this time -- at this time
4 I still, for the most part, had only heard one side of
5 the story, because I hadn't read the Patti Ball report
6 at this time. In fact, the Patti Ball report wasn't
7 released to us until some months down the line. We had
8 to -- if we wanted to read it, we had to read it under
9 supervision of the city attorney.
10 Q. As of January 19th, when you voted to
11 terminate her?
12 A. I believe so.
13 Q. Do you recall a January 10, 2012, meeting
14 where Patti Ball presented an overview of her report?
15 A. I don't remember the exact date, but I
16 remember the overview.
17 Q. Do you recall where that meeting took place?
18 A. It took place in one of the conference rooms
19 at the Sun Valley Company.
20 Q. The second sentence of the second paragraph,
21 you state, "There is no doubt you made mistakes." Do
22 you see that there?
23 A. Mm-hmm.
24 Q. What mistakes do you believe, as of
25 January 20, 2012, Sharon Hammer had made?

Page 48

1 A. I believe by that time I was privy to some of
2 the allegations against her. And I couldn't believe
3 that all those allegations were conjured up. And, in
4 fact, she admitted to some of them in my home, that she
5 had done this and done that, so forth, but with the
6 mayor's permission. And the mayor can't give you
7 permission to do what is wrong. And as a city
8 supervisor, she has a certain responsibility, even if
9 the mayor tells her she can, to not do it. But they
10 were allegations.
11 Q. And did you have that understanding on
12 January 19, 2012, when you voted to terminate her
13 employment?
14 A. Probably. Possibly. But there again, I voted
15 to terminate her employment. None of these allegations
16 had been proved, because I thought it was the best thing
17 for the Hammers. Because I thought if the allegations
18 came out, some of them had to be true; they were so
19 numerous. And she would be harmed professionally.
20 Q. Are there any mistakes that you're referring
21 to in this January 20th letter that you attributed to
22 Jim Donovan?
23 A. I thought Jim should have taken my advice,
24 too, frankly. And I think he made a mistake in not
25 taking my advice.

Page 49

1 Q. And what was the advice specifically that you
2 gave to Jim?
3 A. Take the termination without cause, the
4 severance pay, and get on with their lives.
5 Q. And that's the advice that you gave them in
6 November of 2011?
7 A. I didn't give that to them November 2011
8 because at that time I was only privileged to -- privy
9 to one side of the story.
10 Q. Okay. So this would have been after you were
11 sworn in?
12 A. Yes. And at that time if she had done it, I
13 think she would be further ahead.
14 Q. Were you ever asked for your consent or
15 permission for the City of Sun Valley to place a paid ad
16 in the Idaho Mountain Express that announced the
17 termination of Ms. Hammer's employment? And for the
18 record, that's HAMMER 327.
19 A. Not to my -- not that I recall.
20 Q. Do you recall any discussion regarding that
21 paid ad?
22 A. I don't -- I recall a discussion regarding
23 that -- what the agreement for her termination was, but
24 I don't recall. In fact, I don't even recall seeing
25 this ad. I'm not a big fan of the Mountain Express. It

Page 50

Page 52

1 also causes me frustration.

2 Q. You and a lot of people.

3 A. And I've got enough frustrations in my life.

4 So I don't need to pick up that paper.

5 Q. When you went to -- do you need to take a
6 break?

7 A. No.

8 Q. When you went to Adam King to get some
9 clarification on Sharon Hammer's contract sometime
10 between being sworn in on the 11th and voting for her
11 termination on the 19th, was there any discussion
12 between you and Mr. King regarding a provision in her
13 contract that allowed Mayor Willich to give certain
14 benefits to Sharon Hammer that were outside of the City
15 of Sun Valley policies?

16 A. Not that I recall. I just simply asked
17 Adam --

18 MR. NAYLOR: Well, don't get into specifically
19 what you said and he said.

20 Q. (BY MR. SWARTZ) Do you recall any discussions
21 among your fellow city council members regarding a
22 conflict of interest that any of you may have had with
23 regard to Sharon Hammer?

24 A. A conflict of interest?

25 Q. Yes.

1 when the audit report was completed and the city relayed
2 that they were going to give any employees who were
3 mentioned in that report an opportunity to see the
4 report and comment on it before the report was
5 publically released?

6 A. I don't recall regarding employees, but that
7 was the -- that was -- that restraint was placed on the
8 city council.

9 Q. Say that again.

10 A. I said I don't regard that as to employees,
11 but that restraint was placed on the city council.

12 Q. What restraint?

13 A. That we -- we weren't allowed to comment on it
14 until it was released.

15 Q. And I'm asking about the city placing a
16 restriction on the release of the report until employees
17 mentioned in the report had an opportunity to review it
18 and comment on it.

19 A. I don't recall that.

20 Q. Do you ever recall authorizing Nils Ribi to
21 publically disclose what had transpired in executive
22 sessions?

23 A. I'm in no position to authorize Nils Ribi to
24 do anything, nor is he in a position to authorize me to
25 do anything.

Page 51

Page 53

1 A. No.

2 Q. How about specifically as to Mr. Ribi in light
3 of allegations that were being made against him by Ms.
4 Hammer? Was that perceived as a conflict of interest as
5 he was commenting on Sharon Hammer?

6 A. I don't recall any comment by Mr. Ribi against
7 Sharon Hammer that was -- contained any animosity. And
8 so I don't -- and none of the allegations against -- by
9 Ms. Hammer against Mr. Ribi have been substantiated. So
10 I didn't see any conflict of interest there.

11 Q. At the time --

12 A. I can't read Mr. Ribi's mind as to why he
13 voted for termination. All I can -- only mine I know
14 was mine.

15 Q. Did you have any involvement in the decision
16 to make the Patti Ball report a public document?

17 MR. NAYLOR: Object to the form.

18 THE WITNESS: I didn't have any involvement in
19 the final decision. But my personal opinion was that it
20 should be made public.

21 Q. (BY MR. SWARTZ) And did you express that
22 opinion in a city council meeting or an executive
23 session?

24 A. I possibly did.

25 Q. Do you have a recollection of a period of time

1 Q. Was it your understanding as a city council
2 member that what was said in executive session was not
3 to become public information?

4 A. That's my understanding.

5 Q. After receiving the four different reports
6 that came out and addressed allegations of Ms. Hammer's
7 misuse of finances, did you ever come to know any of
8 those expenditures that were not approved by the city
9 treasurer?

10 MR. NAYLOR: Object to the form.

11 THE WITNESS: I don't have a great deal of
12 knowledge of that. Reportedly, there were two bonuses
13 handed out to a city -- a city employee without council
14 approval. And the former mayor is very vague as to
15 whether he allowed that or not. As I understand in
16 reading an affidavit from him or from him personally,
17 that he may have, but he doesn't recall. So if that was
18 done, that's in violation of city policy.

19 Q. (BY MR. SWARTZ) Do you know if those bonuses
20 fell outside of the budget that had already been
21 approved by the city council?

22 A. I don't. But that's not relevant. Anything
23 like that has to be approved by city council.

24 Q. Was there any expenditure that you believe was
25 attributed to Sharon Hammer and that was inappropriate

Page 54

1 that was not approved by the city council?
2 A. I only know the allegations in the various
3 reports. Specifically, no. I just know the
4 allegations.
5 Q. Was it your understanding that the alleged
6 inappropriate expenditures had been approved by the city
7 council?
8 A. I have no knowledge of that.
9 Q. Of whether they were approved or not approved?
10 A. No. I was not on the council at that time. I
11 just know under this council those things would have to
12 be approved.
13 Q. A payment -- as you understand it, a payment
14 from the city would not be made unless it was approved;
15 correct?
16 A. The city council has a finance committee.
17 Every month, before any bills are paid, the city council
18 committee goes over those payables. That is state
19 statute. We have put some that can be paid without city
20 council approval, but those are the concurrent ones,
21 like gas, lights, electricity, et cetera.
22 Q. Recurring?
23 A. Recurring, yeah. Every other one is made --
24 is okayed by at least two members of the city council,
25 which in the finance committee constitutes a quorum.

Page 55

1 Q. Do you recall when the finance committee was
2 implemented?
3 A. I know when ours was -- the present council
4 was implemented. It was shortly after the council was
5 seated.
6 Q. After you were sworn in?
7 A. Yes.
8 Q. Prior to that time, did you know whether there
9 was a finance committee in place?
10 A. I assumed there was, but I don't know. But
11 without the cooperation of the mayor, it would be a
12 struggle to establish a finance committee.
13 MR. SWARTZ: Mr. Suhadolnik, I think that's
14 all I got for you right now.
15 Mr. Naylor, do you have any follow-up?
16 MR. NAYLOR: I just have one quick question.
17 EXAMINATION
18 QUESTIONS BY MR. NAYLOR:
19 Q. Just for the record, then, on January 19th, in
20 that city council meeting in the open portion, the
21 minutes reflect that you made the motion to approve the
22 termination of the contract of Sharon Hammer; is that
23 correct?
24 A. That's correct.
25 Q. Was there any particular reason why you made

Page 56

1 that motion?
2 A. I know this seems trite, but I thought for the
3 good of the city and for the good of Ms. Hammer that I
4 was the obvious one to make a motion -- make the motion.
5 The two previous council members could have been
6 tainted. I stepped forward because I sincerely thought
7 that was the best thing could be done under the
8 situation.
9 MR. NAYLOR: No other questions.
10 MR. SWARTZ: Just a couple follow-up.
11 FURTHER EXAMINATION
12 QUESTIONS BY MR. SWARTZ:
13 Q. Was there a discussion about the two prior
14 council members possibly being tainted, and one of the
15 new city council members having to come forward?
16 A. No. That was my own conclusion. And so I
17 said -- they said -- well, the mayor said, "We'll need a
18 motion." I said, "I will make it."
19 Q. The mayor said that in the executive session?
20 A. No, in open session. And Mr. Donoval was
21 there, I believe.
22 Q. Tell me about how that transpired in the
23 public session. The mayor said "I'd like to terminate
24 someone's employment," and you said, "We'll need a
25 motion"?

Page 57

1 A. No. It had obviously been discussed. But
2 everything is done in open session. No motions are made
3 in executive session.
4 Q. I understand. I'm asking about the decision
5 as to how to raise the termination of Sharon Hammer's
6 employment. Did that -- did you all have an agreement
7 in executive session that when we break you're going to
8 go back into the public session, and I will make a
9 motion?
10 A. No. To who made the motion, I know that. I
11 don't recall the other. But I made the motion. I made
12 the statement in public session that I would make the
13 motion.
14 Q. What prompted you to say that?
15 A. The mayor asked for a motion on the issue
16 being discussed, which was her termination, and I said,
17 "I'll make the motion."
18 Q. Why did you think that the two prior council
19 members may have been tainted?
20 A. The fact that they had -- that they had been
21 accused of -- been allegations against them by Sharon
22 Hammer.
23 Q. Was that Mr. Youngman and Mr. Ribi?
24 A. I believe so.
25 Q. Do you know what the allegations by Ms. Hammer

Page 58

1 were against Mr. Ribí and Mr. Youngman?
2 A. I do.
3 Q. What were those?
4 A. She -- as I understand, she accused Mr. Ribí
5 of harassment. I don't know specifically with Mr.
6 Youngman. I was pretty much in the dark what had
7 transpired before my swearing in. All I knew was what I
8 had read. And there's very little discussion of it.
9 And as you know, you can't discuss something with one
10 councilman and then discuss the same thing with another
11 councilman separately. That's a serial meeting.
12 MR. SWARTZ: Okay. I don't think I have
13 anything further.
14 (Deposition concluded at 10:38 a.m.)
15 (Signature requested.)
16
17
18
19
20
21
22
23
24
25

Page 59

1 CERTIFICATE OF WITNESS
2 I, FRANZ M. SUHADOLNIK, being first duly sworn,
3 depose and say:
4 That I am the witness named in the foregoing
5 deposition, consisting of pages 1 through 61; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct, except for any changes that I may have listed
10 on the Change Sheet attached hereto:
11 DATED this _____ day of _____,
12
13 CHANGES ON ERRATA SHEET YES _____ NO _____
14
15
16 FRANZ M. SUHADOLNIK
17 SUBSCRIBED AND SWORN to before me this _____ day
18 of _____,
19
20
21 NAME OF NOTARY PUBLIC
22 NOTARY PUBLIC FOR _____
23 RESIDING AT _____
24 MY COMMISSION EXPIRES _____
25

Page 60

1 ERRATA SHEET FOR FRANZ M. SUHADOLNIK
2 Page _____ Line _____ Reason for Change _____
3 Reads _____
4 Should read _____
5
6 Page _____ Line _____ Reason for Change _____
7 Reads _____
8 Should read _____
9
10 Page _____ Line _____ Reason for Change _____
11 Reads _____
12 Should read _____
13
14 Page _____ Line _____ Reason for Change _____
15 Reads _____
16 Should read _____
17
18 Page _____ Line _____ Reason for Change _____
19 Reads _____
20 Should read _____
21
22 Page _____ Line _____ Reason for Change _____
23 Reads _____
24 Should read _____
25 You may use another sheet if you need more room.
WITNESS SIGNATURE _____

Page 61

1 REPORTER'S CERTIFICATE
2 I, JAHNENE ADMIRE, CSR No. 760, Certified
3 Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth, at
6 which time the witness was put under oath by me;
7 That the testimony and all objections made were
8 recorded stenographically by me and transcribed by me or
9 under my direction;
10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;
12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.
15 IN WITNESS WHEREOF, I set my hand and seal this
16 28th day of May, 2014.
17
18
19
20
21 JAHNENE ADMIRE, CSR 760
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires May 04, 2018

EXHIBIT 29
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 29
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

* * * * *

SHARON P. HAMMER and JAMES R. DONOVAL,

Plaintiffs,

vs.

Case No. 1:13-CV-211-EJL

CITY OF SUN VALLEY; NILS RIBI, in his individual and
official capacity; DEWAYNE BRISCOE, in his individual
and official capacity,

Defendants.

* * * * *

DEPOSITION OF JOAN LAMB

Tuesday, June 10, 2014

Page 2

Page 4

1 BE IT REMEMBERED THAT, the deposition of JOAN LAMB
2 was reported by Mary C. Soldati, Registered Professional
3 Reporter, on Tuesday, June 10, 2014, commencing at the
4 hour of 9:05 a.m., the proceedings being reported in the
5 Offices of Rutherford Investment Management, 10300 SW
6 Greenburg Road, Suite 115, Portland, Oregon.

7 APPEARANCES:

9
10 JONES & SWARTZ, PLLC
11 By Eric B. Swartz
12 1573 W. Shoreline Drive, Suite 200
13 Boise, Idaho 83701
14 Eric@jonesandswartzlaw.com
15 Appearing on behalf of the Plaintiffs
16 (via telephone)

17
18 NAYLOR & HALES, P.C.
19 Kirtlan G. Naylor
20 950 W. Bannock Street, Suite 610
21 Boise, Idaho 83702
22 Kirt@naylorhales.com
23 Appearing on behalf of the Defendants

24
25

1 PROCEEDINGS

2
3
4 JOAN LAMB,

5 was thereupon produced as a witness and, after having
6 been sworn on oath, was examined and testified as
7 follows:

8 EXAMINATION

9 BY MR. SWARTZ:

10 Q. Please state your legal name.

11 A. Joan Robertson Lamb.

12 Q. Ms. Lamb, you understand that you have just been
13 administered and have accepted the oath and that the
14 testimony that you are going to give here today carries
15 the same force and effect as testimony given in a court
16 of law?

17 A. Yes.

18 Q. There are a couple of helpful hints to assist
19 Mary in making the most accurate transcript possible
20 today. And the first, being on the phone, we're going
21 to have to give each other a real good pause in between
22 a question being asked and the answer being given.

23 So if you can allow me to complete my question,
24 before you give your answer, I will certainly endeavor
25

Page 3

Page 5

1 INDEX

2 DEPONENT: EXAMINATION

3 JOAN LAMB

4 By Mr. Swartz 4

5 By Mr. Naylor 61

6 EXHIBITS

7 NONE

1 to allow you to finish your answer before I give my next
2 question, okay?

3 A. Yes.

4 Q. And because I'm not there, it will be very
5 difficult for me to understand what a head shake may
6 look like. So please do answer audibly, yes, no or
7 spoken audibly as the question may require, okay?

8 A. Yes.

9 Q. If you don't hear something that I am saying,
10 please let me know that you did not hear it so I can
11 repeat it, okay?

12 A. Yes.

13 Q. If you don't understand a question that I have
14 asked, please let me know you don't understand it and I
15 will attempt to rephrase it, okay?

16 A. Yes.

17 Q. If you do answer a question that I asked, it will
18 be understood that you understood the question, okay?

19 A. Yes.

20 Q. And if you don't know the answer to a question,
21 by all means, please let me know that you don't know.
22 I'm not looking for you to guess. I'm looking for you
23 to share what personal knowledge you may have, okay?

24 A. Yes.

25 Q. The deposition that we're having you sit for

Page 6

1 today requested that you bring with you any materials,
2 documents, notes, meeting minutes or other materials in
3 your possession from any Sun Valley -- City of Sun
4 Valley executive sessions.

5 Did you happen to locate any materials that were
6 responsive to that request?

7 A. No.

8 MR. NAYLOR: Just for clarification, your
9 notice actually says any meetings attended from January
10 5, 2012, to the present. And Joan was not on the city
11 council after January 4th.

12 MR. SWARTZ: Not on the council after
13 January 4th? Is that what you said?

14 MR. NAYLOR: Yes.

15 THE WITNESS: 2012.

16 MR. SWARTZ: I'm with you.

17 BY MR. SWARTZ:

18 Q. Ms. Lamb, do you have any written materials in
19 any executive sessions between November 2012 and January
20 4, 2012?

21 MR. NAYLOR: You mean November 2011?

22 MR. SWARTZ: Correct.

23 A. Not that I have found or am aware of, no.

24 Q. Okay. Other than meeting with Mr. Naylor, did
25 you speak with anyone else about your deposition today?

Page 7

1 A. Speak with anyone else about what?

2 Q. Your deposition today.

3 A. No.

4 Q. Have you spoken --

5 A. Well, I spoke with my -- excuse me. I did speak
6 with my fiance, who arranged for us to have this meeting
7 room to meet in. So he was aware I was having a
8 deposition, but he's not -- that was the extent of our
9 conversation.

10 Q. Okay. Did you speak with Nils Ribi?

11 A. No.

12 Q. Did you speak with Michelle Griffith?

13 A. No.

14 Q. Ron Zidolnik?

15 A. No.

16 Q. Mayor Briscoe?

17 A. No.

18 Q. Bob Youngman?

19 A. No.

20 Q. Any former or current city council member?

21 A. No.

22 Q. Any former or current city of Sun Valley
23 employee?

24 A. No.

25 Q. Did you review any materials?

Page 8

1 A. No.

2 Q. During what period of time did you sit as a city
3 council member for the City of Sun Valley?

4 A. January 2008 to January 2012.

5 Q. And during that period of time, did you have --
6 did you come to have an understanding of what the
7 mayor -- the mayor's role was within the city?

8 A. Yes.

9 Q. What was your understanding?

10 A. The mayor was the administrative chief executive
11 of the city, responsible for overseeing the staff of the
12 city and for chairing the city council meetings.

13 Q. And doing what at the meetings?

14 A. Chairing the city council meetings.

15 Q. Did you have an understanding of what the city
16 council's role was?

17 A. Yes.

18 Q. What was that understanding?

19 A. That our primary function was to prepare and
20 approve the budget for the city and also to vote on
21 various ordinances and other matters that required the
22 elected officials' approval, according to the statutes
23 of the State of Idaho.

24 Q. Once the budget was approved, did you have an
25 understanding of who had the authority to spend the city

Page 9

1 finances that fell within the confines of the budget?

2 A. Who has the authority to do what? Could you
3 repeat that, please?

4 Q. Spend the money that was within the four corners
5 of the budget that was approved.

6 A. The mayor and the city administrator.

7 Q. Whose job was it, if you knew while you were
8 sitting as a city council member, whose job was it to
9 review city expenditures and make sure they were
10 appropriate?

11 MR. NAYLOR: Object to the form. To the
12 extent you're just asking for her opinion, is that what
13 you're asking about, for her understanding?

14 MR. SWARTZ: To the extent that she
15 understood.

16 BY MR. SWARTZ:

17 Q. As a sitting city council member, did you have an
18 understanding of who reviewed and approved any
19 expenditures to make sure they were appropriate?

20 A. Yes, because we actually had city council
21 meetings about that and adopted policies specific to
22 that. So we reviewed what the city policies were, as
23 part of this process.

24 Q. And what was the process, as you understood it,
25 for review and approval of city expenditures?

TABLE OF CONTENTS

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment CONT.	11/18/2014	1359
Corrected Memorandum in Support of Sun Valley's Motion for Summary Judgment	11/21/2014	1375
Sun Valley's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	12/02/2014	1404
Plaintiff's Response to Sun Valley's Motion for Summary Judgment	12/2/2014	1412
Affidavit of Counsel in Support of Plaintiff's Response to Sun Valley's Motion for Summary Judgment	12/2/2014	1446
Reply in Support of Plaintiff's Motion for Summary Judgment	12/9/2014	1470
Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	12/9/2014	1484
Sun Valley's Reply Memorandum in Support of Motion for Summary Judgment	12/9/2014	1492
Memorandum Decision on Motions for Summary Judgment	1/12/2015	1507
Judgment	1/16/2015	1518
Memorandum Decision on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	2/10/2015	1520
Notice of Appeal	2/25/2015	1523
Order Modifying Automatic Stay	3/04/2015	1562
Defendant-Respondents' Request for Additional Transcripts and Record	3/11/2015	1565
Exhibit List		1573
Clerk's Certificate		1574
Certificate of Service		1575

INDEX

Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment CONT.	11/18/2014	1359
Affidavit of Counsel in Support of Plaintiff's Response to Sun Valley's Motion for Summary Judgment	12/2/2014	1446
Certificate of Service		1575
Clerk's Certificate		1574
Corrected Memorandum in Support of Sun Valley's Motion for Summary Judgment	11/21/2014	1375
Defendant-Respondents' Request for Additional Transcripts and Record	3/11/2015	1565
Exhibit List		1573
Judgment	1/16/2015	1518
Memorandum Decision on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	2/10/2015	1520
Memorandum Decision on Motions for Summary Judgment	1/12/2015	1507
Notice of Appeal	2/25/2015	1523
Order Modifying Automatic Stay	3/04/2015	1562
Plaintiff's Response to Sun Valley's Motion for Summary Judgment	12/2/2014	1412
Reply in Support of Plaintiff's Motion for Summary Judgment	12/9/2014	1470
Sun Valley's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	12/02/2014	1404
Sun Valley's Reply Memorandum in Support of Motion for Summary Judgment	12/9/2014	1492
Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	12/9/2014	1484

Page 10

Page 12

1 A. My understanding was that the department head
2 would review and approve all expenditures and then the
3 city administrator -- well, not all. There was -- and I
4 don't remember the dollar amount. Yeah, the department
5 head would approve all expenditures, but they had
6 discretion, up to some dollar amount. I don't remember
7 exactly what it was.

8 And then there was a secondary approval, which
9 was the city administrator. And for expenditures -- and
10 this was part of the policy over -- I don't remember the
11 dollar amount, \$1000 or something, it required a city
12 council member's approval.

13 And we were assigned and rotated through which
14 city council members actually approved those
15 expenditures. We reviewed the invoices for those
16 amounts.

17 Actually, we reviewed all the invoices. They
18 didn't all require our initials, but they were all part
19 of a packet that was provided once a month for rotating
20 city council members to review.

21 Q. In addition to the rotating city council member
22 who would review all of the invoices for city
23 expenditures, was the city council also presented with a
24 packet of expenditures at city council meetings?

25 A. No, not that I recall.

1 Q. The review of the statements, that took place
2 outside of the meeting?

3 A. Yes.

4 Q. But the approval of the payment took place in the
5 meeting?

6 A. I believe it did, because that was a regulatory
7 requirement.

8 Q. While you were sitting as a city council member,
9 do you recall whether there was ever any policy about
10 the non-disclosure of executive session ongoing?

11 A. Yes, there was.

12 Q. Do you recall what that policy was? And not word
13 for word, just generally speaking.

14 A. I believe it was just a policy about not
15 revealing what was discussed in executive session.

16 Q. Was there ever a period of time that you can
17 recall where your fellow city council members were up
18 for review for disclosing information that was disclosed
19 in an executive session?

20 A. Yes, I believe there was.

21 Q. Was the policy implemented before or after that
22 event?

23 A. After.

24 Q. And was the policy put in place because of that
25 event?

Page 11

Page 13

1 Q. Do you recall who would prepare the packets of
2 expenditures for the city council member's review?

3 A. The city treasurer.

4 Q. Was there a period of time that you recall, while
5 sitting as a city council member, where approval was
6 given for a payment of credit card bills in advance?

7 MR. NAYLOR: Object to the form.

8 I can just object for the record. If you
9 if you need him to clarify the question, you can ask him
10 to clarify the question.

11 A. Just repeat the question, again, please.

12 Q. Do you recall at any time, while you were sitting
13 as the city council member, a period of time when the
14 city council was asked to approve the city credit card
15 bills in advance, so that the bills could be paid in a
16 timely manner?

17 A. Oh, yes. Because we actually had -- the council
18 had to act on the actual payment, yes, yes.

19 Well, I can't say -- I think possibly, I can't
20 remember exactly. Possibly.

21 That was sort of a -- it was one of the
22 administrative functions that we did. At council
23 meetings we weren't reviewing them, so it was just a
24 sort of a perfunctory vote that it happened. The review
25 took place outside of the council meeting.

1 A. I wouldn't be able to answer that. I don't know.

2 Q. Was it -- do you recall whether the policy was
3 put in place because the city council wanted to make
4 absolutely clear that everybody on the council
5 understood that what took place in executive session was
6 not to be disclosed at the session?

7 MR. NAYLOR: Object to the form.

8 A. Yes, I believe that that's the case.

9 Q. Do you recall learning of allegations of misuse
10 of public funds by Ms. Hammer?

11 A. Would you repeat the question, please?

12 Q. Sure. Do you recall, while you were sitting as a
13 city council member, any allegations being brought to
14 light about Ms. Hammer's alleged misuse of public funds?

15 A. Yes.

16 Q. Do you recall when you first learned that?

17 A. I believe it was over the weekend of November
18 11th, 12th.

19 Q. Of 2011?

20 A. Yes.

21 Q. Do you recall how it is that you came to learn of
22 those allegations?

23 A. I don't recall who I learned about them from
24 first. I think it was from Adam King, but then also
25 from Mayor Willich.

Page 14

Page 16

1 Q. Do you recall, did they phone you, did they email
2 you?
3 A. I got telephone calls, telephone calls. I may
4 have gotten an email to call, but through telephone
5 calls.
6 Q. Were you out of town when you received the call?
7 A. I was back in town. I was in town.
8 Q. Did you ever get a voicemail from Nils Ribi about
9 a special executive session that was being called on
10 November 11, 2011?
11 MR. NAYLOR: Object to the form.
12 A. I believe I did get a call, a message. It may
13 have been -- yes, I believe I did get a message.
14 Q. Do you recall what Mr. Ribi stated on the
15 message?
16 A. All I recall is that it was about an executive
17 session and I provided my availability.
18 Q. You returned his phone call?
19 A. Either that or I emailed. I don't recall which.
20 Q. Did they wait for you to return back to town
21 before holding their executive session?
22 A. No.
23 Q. Do you know why?
24 A. No.
25 Q. Did you ever ask why they did not want -- why

1 A. Well, I believe he explained that she had
2 listened, Miss Hammer had listened to the police officer
3 relaying -- listened by phone to the police officer
4 relaying that there was an executive session, discussing
5 Ms. Hammer's termination.
6 Q. Did Mr. King -- did he ask that Miss Hammer put
7 the police officer up to listening into the session?
8 A. No.
9 Q. Did Mr. King elaborate upon how the immediate
10 dismissal was going to -- Miss Hammer's employment was
11 proposed to take place?
12 A. Yes.
13 Q. What did he share with you?
14 A. That Mr. Willich -- Mayor Willich was instructed
15 to provide a severance pay offer to her and request her
16 resignation.
17 Q. Who instructed Mayor Willich to deliver the
18 severance and demand for resignation?
19 MR. NAYLOR: Object to the form. To the
20 extent you're asking -- and foundation -- if you're
21 asking her for an incident that did not happen where she
22 was present, if you're asking if she was told and by
23 whom, then lay that foundation.
24 Q. Miss Lamb, I'm just asking for your understanding
25 of -- do you recall -- do you have an understanding of

Page 15

Page 17

1 they did not wait for you to return?
2 A. I believe I may have asked Mayor Willich.
3 Q. Did you get an explanation?
4 A. Yes.
5 Q. What was the explanation?
6 A. That Nils had information that he wanted the
7 council to be aware of and did not want to wait.
8 Q. When you did return to town and you had a phone
9 call with Adam King, what did Mr. King share with you?
10 A. Mr. King stated that the acts that Ms. Hammer
11 committed were so egregious that it called for her
12 immediate dismissal.
13 Q. Did you ask what the acts or the alleged acts
14 were?
15 A. Yes.
16 Q. What was that? What was his explanation?
17 A. What was I told?
18 Q. Yes.
19 A. About expense account irregularities and also
20 about the overhearing of the executive session by one of
21 the police officers that was relayed then to Miss Hammer
22 by telephone.
23 Q. Did Mr. King suggest to you that Ms. Hammer had
24 any involvement in the police officer overhearing the
25 executive session?

1 who instructed Mayor Willich to deliver the demand for
2 resignation and the offer of severance?
3 MR. NAYLOR: Same objection.
4 A. I was told by Mayor Willich that Nils Ribi, with
5 the support of Wayne Briscoe and Bob Youngman told Mayor
6 Willich that he had to confront Ms. Hammer and ask for
7 her resignation and that Adam King supported that.
8 Q. What else did Mayor Willich share with you during
9 your phone call upon return back to the valley?
10 A. That's a pretty open ended question. Well, can
11 you be more specific?
12 Q. Sure. Adam King shared with you that Miss Hammer
13 engaged in egregious acts and the acts required her
14 immediate dismissal.
15 Did Wayne Willich share with you -- Mayor Willich
16 share with you a similar opinion?
17 A. He shared with me that he did not share that
18 opinion, but had no choice because he was outvoted.
19 Q. Did he share with you that he did not believe
20 that Miss Hammer had done anything wrong?
21 MR. NAYLOR: Object to the form.
22 A. I'm trying to recall exactly how he phrased -- I
23 believe he said that there were some expense accounts
24 discrepancies that needed to be investigated that he --
25 that there was concern about the use of city vehicles

Page 18

Page 20

1 and he was adamant that that had been approved by him,
2 and he had also communicated that to the city council
3 members on many occasions.
4 And with respect to the overhearing of the
5 executive session, he stated that it was virtually
6 impossible not to overhear an executive session,
7 especially if you were up in the officers' quarters,
8 because you could just hear everything that went on in
9 the council chambers without trying.
10 Q. Did either Mayor Willich or Adam King share with
11 you anything about discussions regarding the amount of
12 severance offered to Miss Hammer?
13 A. I believe Mayor Willich did, but I don't remember
14 the amount.
15 Q. Did he share with you who was -- who came up with
16 the amount?
17 A. I believe he said the three council members did.
18 And actually, I believe it was -- I believe it was
19 something like three months severance.
20 Q. Did he indicate whether he had any involvement in
21 coming up with the severance amount in connection with
22 Mr. Ribí, Briscoe and Youngman?
23 A. My recollection is he did not agree with the
24 amount.
25 Q. Adam King did not agree with?

1 A. Yes.
2 MR. SWARTZ: Mary, if you could provide Ms.
3 Lamb the notebook. And Ms. Lamb, I'll have you turn to
4 Tab No. 3.
5 MR. NAYLOR: 3?
6 MR. SWARTZ: Correct.
7 A. Okay.
8 Q. Let's see, under Tab 3, a letter dated November
9 12, 2011. Please first just confirm that you got that
10 letter.
11 A. SH-TIMELINE and then it's got five 0's and an 8?
12 Q. Correct. And you see at the bottom of that Page
13 12, there's a cc, which includes J. Lamb.
14 A. Yes.
15 Q. Take just a moment to review that letter and let
16 me know when you're done, okay?
17 My question will be just generally whether you
18 recognize it.
19 MR. NAYLOR: Eric, you're either stepping
20 away from your phone or not talking directly into it
21 anymore and you're really hard to hear.
22 A. Okay. I've read it. And yes, I am familiar with
23 it.
24 Q. Did you read a copy of that letter upon your
25 return to Sun Valley?

Page 19

Page 21

1 A. Oh, no, that Mr. Willich didn't. Why don't you
2 rephrase that question.
3 Q. Sure. Did you come to know whether Adam King had
4 an opinion on the amount?
5 A. No.
6 Q. Did Mayor Willich or Adam King relay to you that
7 there were discussions about -- discussions of Miss
8 Hammer's conduct being criminal in nature?
9 A. Yes.
10 Q. Did either Mayor Willich or -- well, let me ask
11 this first. Who shared that with you? Mayor Willich or
12 Adam King?
13 A. Adam King.
14 Q. Did Mr. King share with you whether Mr. Ribí, Mr.
15 Youngman or Mr. Briscoe was in line with the belief that
16 her conduct was criminal in nature?
17 MR. NAYLOR: Object to the form.
18 A. I don't recall.
19 Q. Upon your return to Sun Valley, were you provided
20 with any materials in advance of the November 14, 2011
21 city council meeting and executive session, do you
22 recall?
23 A. I don't recall any.
24 Q. Do you recall seeing any letters from Mr. Donoval
25 on behalf of Ms. Hammer?

1 A. Yes.
2 Q. Did you read it at that time?
3 A. Yes.
4 Q. There is a second letter behind that one that
5 you've reviewed, dated November 12, 2011. And it's
6 addressed to Mayor Willich.
7 And again, my question would be whether you
8 recognize it. And if you don't mind taking a brief look
9 at that as well.
10 A. Okay.
11 Okay. I've read it and I don't recall seeing
12 this letter.
13 Q. Okay. Let's go back to -- actually, you did
14 attend a November 2011 city council meeting; is that
15 correct?
16 MR. NAYLOR: November what?
17 MR. SWARTZ: November 14, 2011.
18 A. Yes.
19 Q. That was your first meeting upon your return to
20 Sun Valley?
21 A. Yes.
22 Q. Do you recall what took place there?
23 MR. NAYLOR: Well, answer his question. I
24 just pointed her to the minutes, but --
25 A. That's November 11th.

Page 22

1 MR. NAYLOR: Do you recall? Just tell him
2 what you recall.
3 A. Of November 14th?
4 Q. Correct.
5 A. You know, I have to read the agenda or have
6 specific questions asked to be able to tell you what I
7 recall.
8 Q. I asked specifically about the executive session,
9 not the public portion of the meeting, okay? So we have
10 the same understanding?
11 A. Yes.
12 Q. Was there any discussion of what transpired,
13 following the November 11th executive session in the
14 instruction to Mayor Willich to demand the resignation
15 and the offer of severance?
16 A. What I remember mostly was just a discussion
17 about how to move forward in terms of determining
18 whether the allegations were correct or not.
19 Q. Was there, if you can recall, did anyone voice a
20 dissent to wanting to investigate and wanting to -- take
21 action on the information that was being presented.
22 A. Would you repeat that? You just you cut out just
23 a little bit.
24 Q. Yeah. You said that there was discussions about
25 wanting to look into whether the allegations were true.

Page 23

1 And my question to you is, did anyone voice an
2 objection to wanting to investigate any of the
3 allegations, but instead just rely upon the information
4 that had been presented?
5 A. I don't recall that.
6 Q. Do you recall anybody being opposed to
7 investigating the allegations?
8 A. No. There may have been, but I don't recall any.
9 Q. Do you recall any discussions about Miss Hammer's
10 conduct being criminal in nature during the November
11 14th executive session?
12 A. I don't recall it in that session. I recall the
13 discussion, I believe, with Adam King and also
14 separately with Wayne Willich, but I don't believe those
15 discussions were in this meeting.
16 Q. Do you recall any discussions during the November
17 14th executive session about Ms. Hammer's allegations
18 against Nils Ribi and his conduct toward her?
19 A. I don't recall those. It's hard for me to say
20 whether I recall a discussion, whether they were in that
21 session or an independent phone call with Wayne, with
22 Mayor Willich. I'm not sure. I think they were in the
23 independent phone call. I remember a -- definitely
24 remember a discussion about it.
25 Q. A discussion regarding her allegation? Was it

Page 24

1 that Ms. Hammer felt like Miss (sic) Ribi's conduct
2 toward her was inappropriate?
3 A. Yes.
4 Q. That she believed his conduct was in violation of
5 the city's harassment laws?
6 MR. NAYLOR: Object to the form.
7 A. Yes.
8 Q. Have you ever witnessed Mr. Ribi engage in
9 conduct toward Ms. Hammer that you felt was
10 inappropriate?
11 MR. NAYLOR: Object to the form.
12 Foundation.
13 A. Yes.
14 Q. Can you recall what it -- the type of behavior
15 that you observed was?
16 A. It was a raised voice to the extent you could
17 call it yelling, reprimand about either opinion or
18 actions that she had taken. I can remember some of that
19 in council meetings and then some in the hallway, out in
20 the hallway during council meetings, where he disagreed
21 with an opinion she'd expressed.
22 Q. Did you did you believe that his conduct toward
23 her violated the city's harassment policy?
24 MR. NAYLOR: Object to the form.
25 Foundation.

Page 25

1 A. I believed that it was inappropriate for anyone,
2 either a public official, employee. It was
3 inappropriate behavior.
4 Q. Did you observe that Mr. Ribi's conduct toward
5 Ms. Hammer was different than his conduct toward city
6 council members?
7 A. No. I'd have to say no, he showed that behavior
8 numerous times with the mayor.
9 Q. Was his conduct toward women different than it
10 was toward men, as far as you could observe?
11 MR. NAYLOR: Object to the form.
12 A. I can't say that it was, but it's different when
13 you're an employee than when you're an equal.
14 Q. What do you mean by that?
15 A. Well, if someone is exerting -- using their -- if
16 they're in a position of potential power relative to
17 your employment, if they're being abusive verbally, it
18 takes a different -- carries a different weight than if
19 it's someone who is of equal stature position or above.
20 Q. Did you feel like Mr. Ribi's conduct toward you
21 was the same as conduct toward the male city council
22 members?
23 MR. NAYLOR: Object to the form.
24 A. He was much more deferential to the other male
25 council members, to the male council members, yes.

Page 26

Page 28

1 Q. Do you recall whether Mr. Donoval's letter that
2 was received to all the city council members and two
3 incoming city council members was discussed during the
4 2014 executive session?

5 A. I'm sorry. Would you say that again? Repeat the
6 question.

7 Q. Yeah. The letters from Mr. Donoval, dated
8 November 12, 2011, under Tab 3 that you testified you
9 received a copy of before the November 14, 2011 meeting,
10 was that letter discussed in the executive session at
11 the November 14, 2011 meeting?

12 A. Yes.

13 Q. Do you recall the discussion surrounding the
14 second topic in that letter which is on SH-TIMELINE 9,
15 retribution for Ms. Hammer's reporting of his own
16 abusive behavior and harassment?

17 A. What was question about that?

18 Q. Do you recall what the discussion was regarding
19 that topic?

20 MR. NAYLOR: I'm going to object to the
21 extent it calls for legal advice, attorney-client
22 privilege, work-product related.

23 And let me just put you on mute for just a
24 second and find out if there he is any substance to
25 that.

1 affiliated with Holly Troxell, and they had previously
2 been the city attorney for the city, we went to them for
3 an employment labor relation specialist to advise us.
4 And we -- excuse me. We agreed to look for someone to
5 handle the expense account allegations.

6 And I contacted my contacts at Perkins Coie. We
7 got one of their specialists in this area to contact
8 Mayor Willich.

9 Q. Was there a particular reason why you were
10 suggesting Perkins Coie?

11 A. I had done a lot of work in a prior career with
12 them and I thought it would be advisable to have someone
13 with -- certainly not located in the Wood River Valley,
14 totally independent, third-party take a look at the
15 allegations.

16 And it turned out that they actually had someone
17 in their Boise office who had experience in this area.

18 Q. In your experience with Perkins Coie, did you
19 understand that it was a law firm?

20 A. Yes.

21 Q. Were you seeking their investigative work in the
22 expense allegation specifically for legal purposes or
23 was it just a fact finding investigation?

24 MR. NAYLOR: Object to the form.

25 A. State the question again, please.

Page 27

Page 29

1 (Discussion off the record.)

2 MR. NAYLOR: Okay. Maybe Mary can just read
3 the pending question.

4 (Record read.)

5 A. What I recall is that we spent time needing to
6 hire a professional who could advise us on sexual
7 harassment and employee relations, because none of us
8 had the expertise to deal with that.

9 Q. Was there any discussion about hiring a
10 professional regarding the allegations against Miss
11 Hammer?

12 MR. NAYLOR: Objection. A professional
13 what?

14 MR. SWARTZ: Just using Miss Lamb's phrase.

15 A. Well, there was a discussion about hiring
16 professionals who investigate the vacation and expense
17 account misuse allegations, so there was two.

18 There was a professional to help us investigate
19 the allegations related to expenses and then also to
20 handle the sexual harassment allegations.

21 Q. Now, ultimately were there two professionals that
22 the city council decided hire?

23 A. Yes.

24 Q. And who were those professionals?

25 A. We -- since Adam King was affiliated and had been

1 Q. Were you using Perkins -- were you suggesting the
2 use of Perkins Coie because you -- you were seeking them
3 to provide legal services or were you seeking a
4 professional to do a fact finding investigation?

5 A. Seeking professionals to do what I believe was
6 called a forensic audit, the fact finding mission of
7 wrongdoing.

8 Q. By Ms. Hammer?

9 A. Yes.

10 Q. Was there any discussion about needing a
11 professional to do that fact finding mission because of
12 litigation or the threat of litigation?

13 MR. NAYLOR: Object to the form.

14 A. Yes, I believe there was because of the --

15 Q. Do you recall who discussed that?

16 A. No, I don't.

17 Q. Was there a discussion about the -- during --
18 again, during this November 14, 2011 executive session,
19 were there discussions about the city being concerned
20 about being sued by Ms. Hammer?

21 A. I don't recall when exactly those discussions
22 happened. But I know that certainly -- and I believe
23 others from the very beginning were concerned about
24 handling this properly to protect the city from
25 litigation.

Page 30

Page 32

1 Q. Do you recall what you believed Ms. Hammer might
2 sue the city for?

3 MR. NAYLOR: Object to the form. You're
4 just asking for her own thoughts, not what attorneys
5 told her?

6 MR. SWARTZ: That's what I'm asking.

7 A. Well, I think, as I recall, the two issues that
8 seemed to be a concern were wrongful termination in some
9 fashion and sexual harassment allegations that had been
10 made. Not sexual harassment, excuse me, just
11 harassment.

12 Q. Do you recall any discussion during the November
13 14, 2011 executive session about Nils Ribi abstaining
14 from any discussions regarding the allegation against
15 Ms. Hammer in light of Ms. Hammer's allegations against
16 Mr. Ribi?

17 A. I don't recall.

18 Q. Turning back to Mr. Donoval's November 12th
19 letter, the first topic was entitled, Ms. Hammer was
20 granted flexible personal time, was authorized to use a
21 City of Sun Valley vehicle. Do you see that?

22 A. Yes.

23 Q. It was there any dispute during the November 14,
24 2011 executive session regarding the statement that Ms.
25 Hammer was granted flexible personal time and was

1 Q. Nonetheless, he was the proponent?

2 A. Yes.

3 Q. Any other proponents?

4 A. I don't recall.

5 Q. Please turn the page to SH-TIMELINE 10 and you'll
6 see a subject line: Sun Valley City Attorney Adam King
7 should be barred from further participation?

8 A. And can I just comment on that. I can't actually
9 recall if I heard that in the meeting or I heard that
10 afterwards from Mayor Willich.

11 But I do recall being told that. I do recall Mr.
12 Ribi being the one who wanted the investigation.

13 Q. Into Miss Hammer's flex time and use of the
14 vehicle?

15 A. Yes. I'm sorry. You want me to go to Page 10?

16 MR. NAYLOR: Next page.

17 A. Okay.

18 Q. And specifically, the section on stating that
19 Adam King should be barred from further participation.
20 Did you see that?

21 A. Yes.

22 Q. Was there any discussion that you can recall
23 about that in the November 14, 2011 executive session?

24 A. Not that I can say happened, that I heard in that
25 meeting, no.

Page 31

Page 33

1 authorized to use the City of Sun Valley vehicle?

2 MR. NAYLOR: Did you say whether there was
3 any discussion or whether there was any dispute?

4 MR. SWARTZ: Dispute.

5 Q. Did anyone disagree with what Mr. Donoval was
6 stating in that first topic?

7 A. I don't believe so, because we had all been
8 informed in the city council meetings about this.

9 Q. In light of the lack of dispute on that topic,
10 why was there a need to investigate Ms. Hammer's use of
11 personal flexible time and the use of the City of Sun
12 Valley vehicle?

13 A. At that time, I didn't know of any reason.

14 Q. Do you recall who on the city council found that
15 there was a reason to investigate these matters despite
16 the fact that there was no disagreement over her ability
17 to use flex time and the vehicle?

18 MR. NAYLOR: Object to the form.

19 A. Mr. Ribi.

20 Q. When you identify Mr. Ribi as being a proponent
21 of investigating these matters, despite the fact that
22 they were not being disputed, was it that he was vocal
23 about needing to investigate them or vocal about wanting
24 to investigate them; do you recall?

25 A. No.

1 Q. How about any discussion at all?

2 A. I wasn't able to hear everything that happened in
3 that meeting.

4 Q. You were not?

5 A. Yeah. I -- my recollections relate to the
6 discussions about needing to hire the professionals.
7 Those, I quite clearly remember. The rest of it, I'm
8 not I'm as clear about.

9 I had a -- there was a conversation with Mayor
10 Willich I had about Adam King and his -- the
11 appropriateness of whether he participate further or
12 not, and I do remember that.

13 Q. And do you recall what the outcome of your
14 discussion with Mayor Willich about that topic was?

15 A. Mayor Willich had told me that there had been
16 ongoing problems between Ms. Hammer and Mr. King because
17 she was taking on more and more of his work and he
18 wasn't happy with that because she was -- she is also an
19 attorney.

20 Q. Did you or Mr. Willich, to your knowledge, go on
21 and discuss that with any of the city council members or
22 Mr. King?

23 A. I think Mr. Willich brought that up in front of
24 the entire council, but I'm not certain about that or
25 when it happened.

Page 34

Page 36

1 Q. Do you recall how the discussion transpired?
2 A. I recall us having this discussion in Mr.
3 Willich's office.
4 Q. And then later with the entire city council?
5 A. I couldn't say if later or before. I'm foggier
6 on that. It seemed to me that actually may have
7 happened quite a bit earlier in just sort of general
8 conversation with the council about how Miss Hammer --
9 that it was a good thing that Miss Hammer was taking on
10 more of the regular contract business and so forth, so
11 that there was less expense to the city.
12 And I believe that happened in a much earlier
13 city council meeting.
14 Q. As far as you can recall, some of the city
15 council members found this to be a bad thing?
16 A. Right, because it was presented as a good thing
17 in terms of saving the city and tax payers money.
18 Q. Moving on down to the next section identified in
19 Mr. Donoval's letter. And specifically, his request
20 that Miss Hammer be presented with the entirety of the
21 allegations being made against her and having the
22 opportunity to the express those, do you recall whether
23 that was discussed during the November 14th 2011
24 executive session?
25 A. I'm sorry where exactly are you?

1 subjects to your fellow city council members?
2 A. I can't be certain about that, whether I did that
3 in that meeting or if it was just in the conversation
4 with Mayor Willich.
5 Q. Did you find it important to keep the
6 investigation into the allegation against Ms. Hammer
7 confidential?
8 A. Yes. State the question again. Did I find it
9 important to keep it confidential?
10 Q. Yes.
11 A. Yes.
12 Q. Was there any discussion about the importance in
13 keeping confidential the investigation into the
14 allegations against Miss Hammer with the city council
15 members in the November 14, 2011 executive session?
16 A. I don't recall.
17 Q. Do you recall any discussion with city council
18 members at any time regarding Ms. Hammer's reputation
19 and what the allegations being made against her would do
20 to her reputation?
21 MR. NAYLOR: Object to the form.
22 A. I don't recall that from the city council
23 meeting.
24 Q. And not just the November 14, 2011 meeting. I'm
25 just asking about any time.

Page 35

Page 37

1 Q. In the city of Sun Valley has a well established
2 policy on employee discipline section on Page 10.
3 A. Mm-hmm.
4 Q. And it goes over to Page 11.
5 A. I remember a discussion with Adam King about
6 this, but I don't believe it was in that executive
7 session.
8 And not about the policies in place and all of
9 that, not about that, but about the misconduct.
10 Q. Do you recall any discussion, then, about whether
11 or not to allow Ms. Hammer to respond to the allegations
12 being made against her?
13 A. I remember a discussion -- again, whether it
14 happened in that meeting or not, I couldn't say for
15 sure. But a discussion about how it was necessary to do
16 the investigation and then allow Ms. Hammer a chance to
17 respond. That may have been a discussion I had
18 separately with the mayor.
19 Q. Did you feel like it was important for Ms. Hammer
20 to be aware of allegations being made against her?
21 A. Absolutely.
22 Q. Did you feel like it was important for Ms. Hammer
23 to have an opportunity to respond to those allegations?
24 A. Yes.
25 Q. Did you convey your feelings on both of those

1 A. I don't recall other conversations with other
2 city council members. I believe that Mayor Willich and
3 I discussed that.
4 Q. You've alluded to, several times, that you're
5 having discussions with Mayor Willich that were separate
6 from the city council. And I'm just sensing kind of a
7 divide between you and Mayor Willich being in one camp
8 and Mr. Ribbi, Briscoe and Youngman being in another
9 camp.
10 Was there something along those lines going on
11 regarding the allegations being made against Miss
12 Hammer?
13 MR. NAYLOR: Object to the form.
14 A. I think one could make that conclusion.
15 Q. Is that a feeling that you had?
16 A. Mayor Willich and I were -- had both lost our
17 reelections, so there seemed to be a momentum by those
18 who were still in office and had one reelection to move
19 forward, according to their agenda.
20 Q. Did you think the agenda included terminating
21 Miss Hammer's employment as you understood it?
22 MR. NAYLOR: Object to the form.
23 Foundation.
24 A. It appeared that way since they took allegations,
25 and as I was told, instructed Mr. Willich to take

Page 38

Page 40

1 immediate action to terminate Miss Hammer by having her
2 resign.

3 Q. Was there any discussions that you were part of
4 where terminating Ms. Hammer's employment by firing her
5 was discussed?

6 A. I recall the city attorney stating something to
7 that effect to me.

8 Q. That immediate action should be taken just to
9 terminate her employment, don't offer resignation, don't
10 go through an investigation, just terminate the
11 employment?

12 MR. NAYLOR: Object to the form to the
13 extent it calls for legal advice and privileged. Let's
14 go ahead and take a -- go off the record for a minute.

15 (Discussion off the record.)

16 MR. NAYLOR: Okay, Eric, the question as
17 framed called for legal advice and I'll instruct Ms.
18 Lamb not to answer.

19 Q. Ms. Lamb, the statement that you previously
20 attributed to Mr. King, was that being made just to you
21 or to the city council at large?

22 A. We better repeat all of that, what the statement
23 was. Can we have that...

24 Q. Yes, yes. Mr. King discussed terminating, not
25 asking for resignation, but terminating Ms. Hammer's

1 A. The mayor had requested that we go through him
2 with respect to questions that we had of the city
3 attorney years prior at the beginning of his term. He
4 sort of set that up as his preferred way of operating.

5 But my understanding had been that we as council
6 members could individually seek counsel from the city's
7 attorney. And I had on several occasions called with
8 questions.

9 And this case, Mr. King was just bringing me up
10 to date on things that I had missed in the executive
11 sessions.

12 Q. From the November 11, 2011 executive session?

13 A. Well, and -- and it may have been information
14 that came out subsequent to that as well. I don't
15 actually recall when, during that week, we had this
16 conversation.

17 Q. Turning back to the November 14, 2011 meeting
18 date.

19 If you'll look under Tab 4 of your binder, and
20 the third page, specifically, that I'll have you take a
21 look at. The that page number on that one is 2070.

22 A. Okay.

23 Q. If I understand the meeting minutes correctly,
24 you all came out of the executive session and amended
25 the agenda and hiring an independent investigation. Is

Page 39

Page 41

1 employment?

2 MR. NAYLOR: That's the question that was
3 posed as far as what the legal advice was. Why don't
4 you just restate.

5 MR. SWARTZ: We can back up on the record,
6 if you wish, but stated in response to the generalized
7 question whether anyone discussed terminating Ms.
8 Hammer's employment, she identified Mr. King as
9 discussing that.

10 My question to her now is whether that
11 discussion was with her individually or the city council
12 at large.

13 A. With me individually.

14 Q. Based on your experience as a city council
15 member, could a city council member act on their own or
16 is an act of a city council required to be done by
17 resolution and vote?

18 MR. NAYLOR: Object to the form.
19 Foundation.

20 A. Act on their own in what regard?

21 Q. Well, with the exception of reviewing -- being
22 designated to review expenses on that monthly basis,
23 could a city council member, for example, go to --
24 unless otherwise directed by the council, go to Adam
25 King and ask for legal advice?

1 that on the agenda? Sorry on the meeting minutes?

2 A. Yes.

3 Q. The independent investigation that was -- that
4 was to be conducted, was that into the allegations
5 against Miss Hammer or into the allegations against Mr.
6 Ribi by Ms. Hammer or both, if you recall?

7 A. I recall it to be the allegations against Ms.
8 Hammer.

9 Q. Do you recall what the plan of action was with
10 regard to the allegations by Ms. Hammer against Mr. Ribi
11 at the November 14, 2011 meeting?

12 A. No. I recall discussing hiring an employment
13 specialist, but I don't recall at what meeting that was.

14 Q. You stated earlier that in light of the fact that
15 there was no disagreement about Ms. Hammer's flex time
16 and use of the vehicle, that you didn't believe that
17 there was need for an investigation.

18 Do you recall that need for an investigation? Do
19 you recall that?

20 A. Yes, I recall that we were -- we council members
21 were aware that she had the use of the vehicle and flex
22 time. That was presented to us when she was initially
23 hired.

24 Q. Was there something else that you believed was
25 going to be investigated as part of this new agenda item

Page 42

1 at the November 14, 2011 meeting or were the allegations
2 regarding flex time and the vehicle, were those the
3 items that were going to be investigated?

4 A. Well, I recall being told that the city
5 treasurer, Michelle Frostensen, had said that there had
6 been discrepancies in terms of how expenses -- I guess,
7 it was mostly vacation time -- was handled.

8 So, so were these allegations being made that
9 needed to be resolved one way or the other to ascertain
10 whether they were appropriate or not appropriate.

11 Q. And that's what you understood the
12 investigation -- that's why you believe the
13 investigation was proceeding?

14 A. Yes, to take the allegations that the city
15 treasurer had made and determine whether there were,
16 indeed, infringements or if it was in the guidelines
17 that Mayor Willich had set out.

18 MR. SWARTZ: We've have been going for about
19 an hour and a half. Would now be an okay time to take a
20 break get up and stretch our legs?

21 (Discussion off the record.)

22 (Break taken.)

23 BY MR. SWARTZ:

24 Q. Ms. Lamb, I previously was asking about whether
25 there was any discussion regarding whether Mr. Rib

Page 44

1 Miss Hammer's behalf while you were sitting as a city
2 council member?

3 MR. NAYLOR: That's a yes or no question.

4 A. No, pretty sure not. No. I think I remember
5 Mr. -- never mind.

6 Q. So your answer is no?

7 A. No.

8 Q. Your answer is no, correct?

9 A. Yes, my answer is a no.

10 Q. Your answer is no?

11 A. Yes, it is no.

12 Q. I'm with ya. Let me have you turn back to the
13 binder and specifically, Tab 5, there's a November 15,
14 2011 letter SH-TIMELINE 000016 through 17, a letter by
15 Mr. Donoval, cc'ing all city council members as well as
16 incoming city council members.

17 Take a moment to review that. Let me know when
18 you're done. And again, my question will just be
19 whether you recognize it.

20 A. I can't say that I really recall this letter, but
21 that doesn't mean I didn't see it.

22 Q. Sure.

23 A. Yeah.

24 Q. Turn one more page, and it's an email from Mr.
25 Donoval to you and to Mayor Briscoe delivering what

Page 43

1 should abstain from discussions about Ms. Hammer in
2 light of the allegations that she was making against
3 him.

4 Along the same line to that question, I'll ask
5 whether there was any discussions about Mr. Ribi perhaps
6 needing to abstain from those discussions in light of
7 him being sued by Ms. Hammer. Do you recall anything
8 like that?

9 A. No.

10 Q. Do you recall any discussions about Mr. Ribi and
11 Mr. Donoval having made allegations about Mr. Ribi's
12 mental health?

13 A. Well, what was in that letter provided by the
14 letter sent by Mr. Donoval.

15 Q. Was that discussed at the November 14, 2011
16 meeting?

17 A. I don't recall.

18 Q. Were there any allegations of or any discussions
19 about Mr. Youngman not engaging in discussions about Ms.
20 Hammer because he was sued by Ms. Hammer?

21 MR. NAYLOR: At what time?

22 MR. SWARTZ: Ever.

23 A. I don't recall.

24 Q. Do you recall ever being presented with any
25 offers of settlement by Ms. Hammer or by Mr. Donoval on

Page 45

1 appears to be that letter.

2 I'm just going to ask you whether the email helps
3 refresh your recollection.

4 A. I don't think I got this email, because I wasn't
5 getting emails at that email address.

6 That was the City of Sun Valley email address and
7 I had a hard time accessing those emails. I never
8 checked that email. I don't think I saw this.

9 Q. What about -- go ahead and turn the page to a
10 letter November 16, 2011, HAMMER000135 through 138, take
11 a moment to review that let me know when you're done.
12 And again, I'll ask whether you recognize it.

13 A. I can't say that I've seen this letter either.

14 (Pause.)

15 A. Hello?

16 Q. Yes.

17 A. Yeah, I said, I can't say that I've seen this
18 letter, either.

19 Q. The next city meeting was on November 17, 2011.
20 And I understand this was after the decision to conduct
21 an investigation into the allegations against Miss
22 Hammer had been decided.

23 My question for you is whether you recall what
24 took place at the November 17, 2011 executive session.
25 And if will refresh your recollection, the meeting

Page 46

1 minutes are under Tab 6 in the binder.
2 A. And what's the question you're asking me?
3 Q. Whether you recall what was discussed in
4 executive session on November 17, 2011.
5 A. No. No, you'd have to ask me specific questions.
6 Q. Do you have any recollection of anything that was
7 discussed in the November 17, 2011 executive session?
8 A. Well, I don't remember which meeting we discussed
9 the hiring of our two outside advisors, if you will, the
10 employment lawyer from Holly Troxell. I know we had a
11 conversation with him on the phone. It might have been
12 in that executive session. I don't recall if that was
13 the one.
14 And I think, again, at some point Mr. Willich
15 reported to us about him having hired Patty Ball. I
16 don't know if it was -- I don't recall if it was at that
17 meeting or not.
18 Q. And if it helps trigger your recollection, this
19 meeting was held at the Sage Room at the Sun Valley
20 Lodge.
21 And according to the meeting minutes when you all
22 came out, you amended the agenda to add the appointment
23 of an assistant city clerk?
24 A. Yeah. There were a lot of personnel issues at
25 that time reported to us about who was refusing to come

Page 47

1 to work because of various allegations. Again, I don't
2 remember the timeline exactly. There was a lot of
3 turmoil at that point in time.
4 Q. Did you understand what was causing the turmoil?
5 A. My understanding was that there was a lot of
6 whistleblowing going on because people were concerned
7 about their jobs.
8 Q. Do you recall Ms. Hammer having been identified
9 as a whistleblower as a result of her allegations of
10 inappropriate conduct by Mr. Ribí?
11 MR. NAYLOR: Object to the form.
12 A. No.
13 Q. Do you recall any discussions about whether to
14 place Ms. Hammer on administrative leave?
15 A. Yes, I remember a heated discussion about that, I
16 can't say at what meeting it was, with Mayor Willich
17 saying he wasn't going to do it and Mr. Ribí pressuring
18 him to do it.
19 Q. Did you have an understanding of why Mr. Ribí was
20 pressuring Mr. Willich to put Ms. Hammer on leave?
21 A. I believe he wanted her on leave so that she
22 wouldn't have any access to the books and records in the
23 city.
24 Q. Do you recall why Mayor Willich was opposed to
25 placing Miss Hammer on leave?

Page 48

1 A. I believe he thought it was inappropriate until
2 the allegations were investigated and substantiated or
3 not.
4 Q. We previously spoke about two camps forming after
5 the election. You and Mayor Willich in one camp and Mr.
6 Briscoe, Ribí, Youngman in the other camp.
7 Which camp would you say Adam King was affiliated
8 with?
9 MR. NAYLOR: Object to the form.
10 A. Well, as the city attorney, he wanted to continue
11 to be city attorney, so his opinions mirrored those of
12 the other three that your -- or his statements were
13 consistent with the other three that you'd mentioned.
14 Q. And were those statements generally about Ms.
15 Hammer having engaged in conduct that they believed to
16 be criminal in nature?
17 MR. NAYLOR: Object to the form.
18 Foundation.
19 A. I remember the word criminal being used. I'm
20 not -- I don't remember who used it.
21 Q. Was it that this other camp generally believed
22 that Ms. Hammer had engaged in the conduct that she was
23 alleged to have engaged in?
24 MR. NAYLOR: Object to the form.
25 Foundation. Calls for speculation.

Page 49

1 A. State the question again or do you want to
2 restate it another way or...
3 Q. The sentiment that Mr. King, Mr. Briscoe, Mr.
4 Ribí, Mr. Youngman was displaying to you and that you
5 were observing, was that sentiment that Miss Hammer had,
6 in fact, engaged in the inappropriate conduct or was it
7 just more along the lines of we have to investigate
8 this?
9 In other words, had they made up their minds
10 about the conduct, as far as you could tell?
11 MR. NAYLOR: Object to the form. Calls for
12 speculation, foundation.
13 A. Well, certainly Mr. Ribí seemed quite clear about
14 the allegations being more than just allegations,
15 something that required action.
16 Mr. King seemed to be most -- the conversation
17 with me, seemed to be most concerned with, even if the
18 allegations weren't true, the fact that she eavesdropped
19 on the executive session, which was -- I don't believe
20 he used the word criminal activity, but grounds for
21 dismissal.
22 Q. And what about Mr. Briscoe?
23 A. He generally followed Mr. Ribí. I don't recall
24 exactly what he may have stated.
25 Q. What about Mr. Youngman?

Page 50

1 A. Same. He was generally supportive of Mr. Ribí's
2 position.
3 Q. At some point before your term as a city council
4 member ended, do you recall a meeting where you were
5 presented with preliminary findings by Patty Ball?
6 MR. NAYLOR: Object to the form. Use of
7 preliminary findings.
8 A. I was made aware of her report being available
9 for city council members to review in Mr. King's office
10 and I went and reviewed the report.
11 Q. Do you recall when that was?
12 A. No. It was prior -- it was while I was still a
13 member of the council. I believe it must have been in
14 December. I don't recall when the report was published.
15 Q. Do you recall any discussions about whether to
16 make the report public?
17 A. No.
18 Q. Do you recall any discussions about any
19 inaccuracies in the report?
20 A. I believe Mayor Willich and I had a conversation
21 about his concerns about that.
22 Q. Concerned about inaccuracies contained in the
23 report?
24 A. Inaccuracies and questions that he had.
25 Q. Did you discuss those inaccuracies and questions

Page 51

1 that Mayor Willich had with your fellow city council
2 members?
3 A. No.
4 Q. Was there any discussion about any need to
5 correct the Patty Ball report that you reviewed in Adam
6 King's office?
7 A. Not that I was part of.
8 Q. Do you recall what the plan was for proceeding
9 after you reviewed the report in Adam King's office with
10 regard to the allegations against Ms. Hammer?
11 A. No.
12 Q. Did you have an understanding of whether the
13 investigation into the allegations against Miss Hammer
14 were finalized at the time that you had reviewed the
15 Patty Ball report in Adam King's office?
16 A. Given the timing of the report and the Christmas
17 holidays and the swearing in of the new elected
18 officials, I believe it all was being deferred until
19 they took office.
20 Q. So as you understood it, everything was just kind
21 of placed on hold until Mayor Briscoe took office and
22 the new city council person took office?
23 A. Yes.
24 Q. As of November 18th, 2011, did you have reason to
25 believe that Ms. Hammer may have engaged in criminal

Page 52

1 behavior?
2 A. November 18th?
3 Q. Correct.
4 A. There was nothing that -- there was nothing
5 definitive. So I guess the answer would be perhaps, but
6 we had no information supporting that at that time.
7 Q. Have you ever -- whether this was while you were
8 sitting as a city council member or afterward, had you
9 ever come to know of any conduct that Miss Hammer
10 engaged in that you believe was improper?
11 A. Could you repeat the question, please?
12 Q. Have you ever come to know of any conduct that
13 Ms. Hammer engaged in that you believed to be improper?
14 A. The only possible conduct related to statements
15 that were made in the Patty Ball report that -- many of
16 which needed further investigation, in my opinion, what
17 I saw was more lapse of judgment.
18 But the report, in my opinion, wasn't the final
19 document. And I believe she even stated that in her
20 report, that there were items that needed to be
21 clarified.
22 Q. So would you agree with me, then, that you never
23 have become aware that Miss Hammer engaged in what you
24 believed to be inappropriate?
25 MR. NAYLOR: Object to the form.

Page 53

1 A. Nothing that was totally substantiated and
2 proven, no.
3 Q. Let me have you turn to Tab 7, about halfway
4 through that section. You'll see an affidavit of Nils
5 Ribí and the page numbers are HAMMER000813817.
6 MR. NAYLOR: She's there.
7 A. Am I supposed to read this?
8 Q. Well, we're going to go through just a couple of
9 portions.
10 Down on the second page, Paragraph No. 8, Mr.
11 Ribí states, "During the course of the executive
12 session, matters were presented to the council that
13 caused all members serious concerns about possible
14 misuse of public funds and equipment by the Plaintiff."
15 Do you see that there?
16 A. Mm-hmm.
17 Q. Is that a yes?
18 A. Yes, yes. Sorry.
19 Q. Sharon Hammer is the Plaintiff, you'll see on the
20 first page, the caption of this affidavit --
21 A. Yes.
22 Q. -- that Mr. Ribí is referring to.
23 My question to you is whether you recall the city
24 council authorizing Mr. Ribí to reveal what transpired
25 in the executive session?

MR. NAYLOR: Object to the form.

A. No.

Q. Do you recall Mr. Ribí asking for authorization by the council to reveal what transpired in the executive session?

A. No.

Q. Based upon your understanding of the policy against revealing what transpired in the executive session, do you believe that Mr. Ribí's statement in Paragraph 8 about what transpired in executive session violates that confidentiality policy?

MR. NAYLOR: Object to the form.
Foundation.

A. Yes.

Q. I'll have you turn to the next page, Paragraph 10. Mr. Ribí states in the second sentence there, "That the mayor and the council had reason to believe that the Plaintiff may have committed serious misconduct, including possible criminal violations." Do you see that section?

A. Mm-hmm.

Q. Did you believe that as a council member, that she may have committed serious misconduct, including criminal violations, as of November 18, 2011?

A. I didn't know. I didn't have any information one

1 didn't believe she could do her job properly and --
2 yeah, so I remember discussions about that.

3 Q. Do you recall why the city clerk didn't feel as
4 though she could perform her job?

5 A. She believed that Miss Hammer was going to be
6 vindictive towards her in some fashion.

7 Q. Do you know whether Miss Hammer was on
8 administrative leave at the time that the city clerk was
9 concerned that Ms. Hammer might be vindictive toward
10 her?

11 A. I don't recall. I recall that there was an issue
12 between which one of those was on administrative leave
13 at what time. And that because Ms. X's cell phone had
14 been the one that recorded the conversation with the
15 police officer, she was concerned about being in the
16 same office that Miss Hammer was in.

17 But I don't remember the dates, because they were
18 put on administrative leave, brought back, put on again.
19 And I don't remember who was there when.

20 Q. Okay. Do you recall an offer of settlement made
21 by Ms. Hammer that included calling for Mr. Ribí's
22 resignation?

23 A. Well, I just saw that in the documents here. And
24 what tab was that one under?

25 Q. Well, I think that there is one reference to it

1 way or the other.

2 Q. Let me have you turn to Tab 8. This should be
3 the December 2nd, 2011 meeting and executive session.
4 Let me know when you're there.

5 A. Yes.

6 Q. My question to is whether you remember what was
7 discussed in executive session at that December 2nd,
8 2011 meeting?

9 A. I would need to have specific questions to jog my
10 memory.

11 Q. Do you recall whether allegations about Miss
12 Hammer were discussed in the December 2nd, 2011 meeting?

13 MR. NAYLOR: Object for the form.
14 Foundation.

15 A. Oh, I'm sure they were.

16 MR. NAYLOR: Do you recall?

17 A. Yes. That was the purpose of the meeting.

18 Q. Was the purpose of the meeting to discuss any
19 other allegations against any other employees or if you
20 recall whether it was just focused on Miss Hammer?

21 MR. NAYLOR: Object to the form.
22 Foundation.

23 A. Again, I don't recall if it was at this meeting

24 or another. But there was a discussion about the city
25 clerk wanting to be on administrative leave because she

1 on under Tab 9 SH-TIMELINE335.

2 A. There was the December 6th one. Let's see.
3 We've already passed one.

4 Q. Okay. Then try Tab 7, right after the Ribí
5 affidavit.

6 A. It's under Tab 5. Let's see. It's the November
7 16th letter.

8 Q. Okay. That's HAMMER135 through 138?

9 A. Yes.

10 Q. Do you recall any discussion about Mr. Ribí
11 resigning as part of an offer being made by Miss Hammer?

12 A. No.

13 Q. Tab No. 10, please. Actually, No. 11. It should
14 be a December 2011 meeting, an executive session.

15 A. Okay.

16 Q. Do you have any recollection of what was
17 discussed in executive session on December 20, 2011 --
18 oh, I'm sorry, December 15th, 2011?

19 A. Not without specific questions. I mean, I know
20 it was still about the issues with Miss Hammer and other
21 city employees, but beyond that, I don't recall
22 specifics without specific questions.

23 Q. Fair enough. It's been a while ago.

24 When you would attend executive session, would
25 you generally take notes?

Page 58

Page 60

1 A. Not generally, no.

2 Q. Do you have any recollection of any time Mayor
3 Willich having decided that Miss Hammer had done nothing
4 wrong, that he was ending the investigation and that he
5 was bringing her back to work?

6 MR. NAYLOR: Object to the form.

7 A. I remember that he was saying that he was
8 bringing her back to work, because she was still on the
9 city payroll and needed to be back to work and there was
10 work to be done. That's what I remember.

11 Q. Do you remember anyone voicing an opposition to
12 Mayor Willich bringing Miss Hammer back on?

13 A. I believe that Mr. Ribi and perhaps some of the
14 other council members were in opposition and that Mr.
15 Willich said that it was within his purview to do and he
16 was doing it.

17 Q. Do you recall any discussions at any time about
18 whether to disclose Patty Ball's report to the Blaine
19 County prosecutor?

20 A. I remember that there was discussions about that
21 and about whether it was -- I think it was a discussion
22 about whether it was required that we do so or not.

23 Q. Do you recall ultimately what was decided
24 regarding whether you were required to turn it over to
25 the Blaine County prosecutor?

1 And I believe Mr. Ribi was very opposed to that.

2 And I also remember that it was clear to
3 everybody that the important decisions were all going to
4 be made by the new council and the mayor. Or not
5 important, but the decisions regarding resolution of the
6 issue were going to be made by them.

7 Q. And not by Mayor Willich?

8 A. Well, not by, yes, not by the existing Mayor
9 Willich or the lame duck council at that point. Because
10 there were -- there was disagreement and the -- and as
11 you pointed out, there was a minority point of view, and
12 a majority point of view.

13 And the minority point of view was in favor of
14 continuing to -- continuing to review the allegations
15 and the majority opinion was in favor of termination of
16 Ms. Lamb.

17 Q. Unless you have something to add to your
18 testimony or anything that you need to correct, I think
19 I'm done. Mr. Naylor may have some follow-up.

20 MR. NAYLOR: Let's take a break. I just
21 need to review my notes and I'll see.

22 MR. SWARTZ: Okay. Back with you all in
23 about five minutes.

24 (Break taken.)

25 EXAMINATION

Page 59

Page 61

1 MR. NAYLOR: Object to the form.

2 A. No.

3 Q. Do you recall any discussion about whether Miss
4 Hammer should be interviewed by Patty Ball a second time
5 to address your -- to address questions that had come up
6 during Patty Ball's investigation?

7 A. I don't remember that specifically. I remember
8 the mayor having questions about many of her findings.

9 Q. After the Patty Ball report came out and before
10 you left office, do you recall any discussions during
11 that timeframe about terminating Miss Hammer's
12 employment?

13 A. I don't recall any specific discussions, no.

14 Q. Were there discussions, in general, from the time
15 that you returned to the valley on November 12th that
16 said, through the end of your term, regarding the
17 termination of Miss Hammer's employment?

18 A. It's hard for me to remember. There were -- I
19 remember Nils being adamant about her being terminated.
20 I don't remember exactly what period of time that was.
21 I mostly remember by the time we had the report, that
22 this was -- the mayor refused to -- wanted her back to
23 work, thought that she should be there, based on the
24 information that had been provided and further
25 evaluation of it.

1 BY MR. NAYLOR:

2 Q. Ms. Lamb, you testified that Wayne Willich had
3 talked to you about some issues or something to with the
4 Ball report. Do you remember when you had that
5 conversation with Wayne Willich? And maybe it might
6 help, was it before or after you reviewed it in Adam
7 King's office?

8 A. I can't remember if it was -- well, I would have
9 to say after, because I can remember saying that I felt
10 there was -- there were clearly lapses of judgment, but
11 I believed Ms. Hammer needed a chance to respond to the
12 various instances that were outlined in there. And we
13 both agreed on that fact.

14 Q. Do you recall what Mayor Willich said were the
15 issues that he had with the Ball report in that
16 conversation?

17 A. No. I can remember him talking about use of the
18 credit card and just in kind of a general -- no, I don't
19 remember any specifics. I think it was more that there
20 were a lot of -- there was a lot of detail there and
21 that Miss Hammer needed a chance to look it over and
22 respond.

23 And in his opinion, he thought there would be
24 explanations for some of it, much of it, something in
25 that range.

Page 62

Page 64

1 Q. You used the term "inaccuracies" in reference to
2 Mayor Willich talking about the Ball report. And what
3 did you mean by that?
4 A. I just remember him saying something along those
5 lines. And I don't know what he meant, if he just meant
6 that he thought that there would be clarification of
7 some of the points raised. So there was nothing
8 specific that I recall.
9 Q. After you reviewed the Ball report, did you have
10 an opinion on whether you considered it to be a fair,
11 reasonable, accurate, thorough report?
12 A. It seemed.
13 MR. SWARTZ: Objection. Compound.
14 A. It seemed to be very thorough to me. But it also
15 raised questions in my mind, as I read it, as to what
16 the other side of -- what's the other side of the story.
17 And fair and accurate, I mean, it's hard to say
18 fair and accurate without, again, the person who is
19 accused of these things having a chance to rebut it, so
20 to speak.
21 Q. Now, you recall in that Ball report that she had
22 already interviewed Sharon Hammer?
23 MR. SWARTZ: Objection. Foundation.
24 A. Yeah. I recall that there was an interview of
25 Sharon, yes. Yeah.

1 within the confines that Mayor Willich had authorized
2 her?
3 A. It seemed as though the city treasurer had some
4 questions about that. So -- that she had raised them.
5 But again, this is -- I wasn't at that meeting. And so
6 I think the major thing that I recall was more about --
7 at that time, was more about the vacation time. That
8 that was the bigger issue, bigger dollar amount, that
9 she had been paid for vacation time or somehow had
10 hadn't appropriately recorded the vacation time, so it
11 had been overpaid, something related to that, but that
12 was the major issue.
13 Q. So what was the reason for -- well, even though
14 you didn't apparently vote on the motion to retain an
15 attorney to do an independent investigation at the
16 November 14th or November 17th meeting because your
17 phone cut out, were you supportive of the mayor hiring
18 an investigator?
19 A. Yes.
20 Q. And what was your reasoning for hiring an
21 investigator at that time?
22 A. Well, that the city's treasurer had come forth
23 with allegations that she thought were substantive and
24 that it was possible for us to ascertain what the -- for
25 us, the city council to ascertain, what was factual and

Page 63

Page 65

1 Q. Okay. And some of the conclusions that Ms. Ball
2 raised were that there needed to be further additional
3 follow-up on some issues?
4 A. That's what I remember. That, yes, that some
5 items raised questions that she thought needed
6 follow-up.
7 Q. Now, at the time that the -- well, I believe you
8 testified that the city council knew that Sharon Hammer
9 was using the city vehicle and driving it around?
10 A. And for personal use as well as city use, yes.
11 Q. And so then, what was the need to -- for Patty
12 Ball to follow-up and investigate with regard to that
13 issue?
14 A. Well, again, I wasn't at that executive session
15 meeting. But my understanding was that there was
16 allegations that some of the -- let's see. That perhaps
17 in some of the personal use -- well, again, you know, it
18 was about the gas credit cards. And I don't remember
19 when the gas credit cards came out.
20 But I thought that was part of the treasurer's
21 initial allegations, some charges on the gas credit card
22 for personal use weren't appropriate. There was
23 particularly a trip to Boise.
24 Q. And was there any issue at that time that needed
25 to be investigated about whether her use of the car was

1 what wasn't without an independent third-party doing
2 such an audit, looking at the issues that had been
3 raised.
4 Q. Did Mayor Willich object to the recommendation to
5 have the independent investigator?
6 A. I don't recall. I don't recall any objections.
7 I mean, sometimes he would -- I mean, he would say
8 himself, sometimes he would have a reaction to something
9 and then he'd settle back down and then move back
10 forward with whatever the plan was, so I don't recall.
11 Q. Do you know why Mayor Willich hired Patty Ball
12 over somebody that you recommended at Stoel Rives or
13 Perkins Coie?
14 A. Perkins Coie. I thought that was at your
15 recommendation, but I'm not sure. I don't know.
16 Somebody had recommended -- I think one of the attorneys
17 somewhere along the line, maybe it was at Holly Troxell,
18 I don't recall, that recommended hiring Patty because
19 she was local and had just done something similar and
20 would cost less.
21 One-man shop. She would cost less than a large
22 law firm.
23 Q. Did Mayor Willich ever tell you why he chose
24 Patty Ball?
25 A. Just, I think he told me those reasons, that she

Page 66

1 was recommended to him and she was going to cost less.
2 Q. And she had done something similar?
3 A. She had experience in this area, which Perkins
4 Coie, the attorney there did too.
5 But Mr. Willich, his predilection was more to
6 using the independent practitioners because he was
7 always trying to keep cost down.
8 Q. Was it your understanding that Patty Ball was
9 tasked with investigating the allegations about
10 harassment by Mr. Ribi that Sharon Hammer had made?
11 A. No. I believe -- I thought she was tasked with
12 doing what we called a forensic audit, is what I recall.
13 It's possible once we got Holly Troxell's employment
14 lawyer involved, there were other conversations between
15 him and Mayor Willich. And I don't know. I don't
16 recall -- no, I recall hers as being forensic audit.
17 Q. And when you read the Patty Ball report, you
18 recall it discussed the financial matters, but also
19 discussed the allegations dealing with Nils Ribi?
20 A. I don't remember the Nils Ribi one so much. I
21 remember the financial matters mostly.
22 Q. Do you recall anything about the fire department
23 in the Patty Ball report?
24 A. I remember there being some questions raised
25 there. I don't remember how thorough it was. I can't

Page 67

1 remember about the fire department. I think most of it
2 happened later, but I think she sort of unearthed the
3 tip of the iceberg there, where there were some, yeah,
4 some real questions about how the procedures that were
5 being followed through.
6 Q. So you don't recall Patty Ball's investigation or
7 conclusions relating to Nils Ribi?
8 A. Not the harassment. I remember reading something
9 that seemed to sort of absolve him from any wrongdoing.
10 And I guess that must have been in her report, because I
11 can't think of another report or document that I would
12 have seen.
13 Q. Did you ever observe Nils Ribi's conduct that
14 you've described that was concerning ever related to
15 anything other than work conduct, failure to do
16 something or the way he wanted it or related to work at
17 the City of Sun Valley?
18 A. No. It primarily related to decisions, work
19 product, points of view, yeah.
20 Q. And then you testified that most of your
21 information came the Michelle Frostensen's allegations,
22 because you weren't at the November 11th meeting, most
23 of the information came from Wayne Willich and Adam
24 King, correct?
25 A. Yes, yes.

Page 68

1 Q. Did you ever have a conversation and sought
2 information from Nils Ribi regarding Michelle
3 Frostensen's allegations?
4 A. I don't remember that. It's possible we could
5 have had some exchange on that, but I don't recall that
6 conversation.
7 Q. And I'm asking about other than at a city council
8 meeting.
9 A. I don't believe so.
10 Q. Did Mayor Willich suggest that some of the
11 allegations raised by Michelle Frostensen, if true,
12 could implicate criminal misconduct?
13 A. No.
14 Q. You didn't talk about any kind of criminal,
15 potential criminal issues with Mayor Willich?
16 A. I don't remember. I remember it being more in
17 the context of, you know, the disciplinary action. I
18 don't remember -- I don't remember criminal activity
19 being discussed, no.
20 Q. Okay. I don't have anymore questions. Eric may
21 still have some.
22 MR. SWARTZ: No. Thank you, Miss Lamb.
23 MR. NAYLOR: You have the opportunity to
24 read and sign your deposition, which means you could
25 review the transcript to ensure that accuracy of the

Page 69

1 court reporter. If you make any changes, obviously, and
2 testify differently at a later time, that can be
3 commented on.
4 But you can also waive that right and just
5 leave it the way it's been recorded by the court
6 reporter. It's your choice.
7 THE WITNESS: So it's about whether she got
8 it accurate or not?
9 MR. NAYLOR: Yes. I mean, some witnesses
10 say, I'm done. The court reporter is fine. Or some
11 want to read their transcript to make sure that there
12 wasn't anything misspoken and you have that right.
13 THE WITNESS: I suppose I should read it.
14 (Whereupon, the deposition concluded at
15 12:10 p.m.)
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Page 70

C E R T I F I C A T E

I, JOAN LAMB, do hereby certify
that I have read the foregoing transcript of my
testimony, and further certify that it is a true and
accurate record of my testimony (with the exception of
the corrections listed below):

Page	Line	Correction
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JOAN LAMB

Sworn and subscribed to before me this
day of _____, 2014.

Notary Public

My Commission expires:

Page 71

C E R T I F I C A T E

State of Oregon
County of Multnomah

I, Mary C. Soldati, Registered Professional Reporter
and Notary Public in and for the State of Oregon, do
hereby certify that JOAN LAMB, was satisfactorily
identified and was duly sworn by me, and that such
deposition is a true record of the testimony given by
the witness.

I further certify that I am neither related to
nor employed by any of the parties in or council to this
action, nor am I financially interested in the outcome
of this action.

In witness whereof, I have hereunto set my hand
this 25th day of June, 2014.

Mary C. Soldati, RPR

My commission expires:

October 28, 2014

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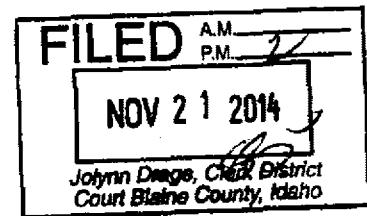
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Ribi, and Briscoe.



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**CORRECTED MEMORANDUM IN
SUPPORT OF SUN VALLEY'S
MOTION FOR SUMMARY
JUDGMENT**

ORIGINAL

Defendant, the City of Sun Valley, by and through its counsel, Naylor & Hales, P.C., hereby submits this Memorandum in Support of Sun Valley's Motion for Summary Judgment. As shown below, summary judgment is appropriate in this case and Plaintiff's complaint should therefore be dismissed, with final judgment entered in favor of Sun Valley, Nils Ribi and DeWayne Briscoe.

SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 1.

I. INTRODUCTION

Plaintiff Sharon R. Hammer sued Sun Valley under the Idaho Public Employee Protection Act, Idaho Code § 6-2101 *et seq* (the "Whistleblower Act") on June 29, 2012. (See Complaint for Damages and Demand for Jury Trial). She claims that she was twice placed on paid administrative leave pending an investigation in December 2011 and January 2012, then terminated on January 19, 2012, in retaliation for having allegedly reported that then-Councilman Nils Ribi¹ harassed her.

Hammer, however, waived this claim when she executed her City Administrator Employment Agreement ("Employment Agreement") on June 1, 2008. She then later released this claim at the time she was terminated in January 2012 when she executed a "Supplemental Release Pursuant to City Administrator Employment Agreement" (the "Release") in exchange for a six-month severance payment. Indeed, the Honorable Edward J. Lodge, United States District Court for the District of Idaho, has already ruled that Hammer's waiver and release was valid and binding with respect to similar state and federal claims based on retaliatory discharge.

Additionally, Hammer's Whistleblower Act claim is meritless. First, a portion of it is time barred because she did not timely file suit within 180 days after the alleged violation. More so, with respect to the non-time barred portions, summary judgment is appropriate because, in short, there is insufficient evidence upon which Hammer can make out a prima facie case of retaliation in violation of the statute. And even if she could, Sun Valley had a legitimate, non-discriminatory reason to discharge her and she cannot show that such reason was a pretext. Trial is therefore unwarranted here.

¹Nils Ribi served two, four-year terms as a Sun Valley Councilman, ending in January 2014.

Last, Hammer's claims for damages exceed the scope of allowable damages under the Whistleblower Act. In the unlikely event that any portion of Hammer's claim makes it past summary judgment, and in the even more unlikely event she prevails at trial, Hammer cannot as a matter of law obtain the full relief she seeks. The Court should therefore grant partial summary judgment with respect to damages.

II. BACKGROUND

A. Hammer's Employment Agreement and Release

Hammer was hired as the City Administrator for Sun Valley on June 1, 2008, under the terms of a written Employment Agreement. (Complaint, ¶¶ 1, 16.) Section 3 of the Employment Agreement contains two termination provisions such that Hammer's employment could be terminated by Sun Valley either with or without cause. Specifically, Section 3.A (the "without cause" provision) provides in plain and unambiguous language:

Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

(Declaration of Susan Robertson, Ex. A (Employment Agreement, § 3.A)) (emphasis original).

Section 3.B provides that in the event of a termination "with cause" Hammer would not be entitled to any severance payment. (*Id.*, § 3.B.)

The next year Hammer executed an Employment Agreement Extension that provided for automatic, annual one-year extensions of the Employment Agreement. (*Id.*, Ex. B (Employment Agreement Extension, § 2.)) It is thus undisputed that the Employment Agreement was in full force and effect at the time of Hammer's termination.

On January 19, 2012, Hammer was terminated from her position at Sun Valley under the "without cause" provision of her Employment Agreement. In compliance with Section 3.A, Hammer drafted, through her attorney/husband James R. Donoval, and executed the Release stating in full:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

(*Id.*, Ex. C) Hammer received her six-month severance payment as stated therein and she and Sun Valley parted ways.

A mere six months after accepting that money and agreeing not to sue Sun Valley, however, Hammer turned around and sued Sun Valley and two officials² for alleged violations of the Whistleblower Act.³ Hammer alleges that during the time of her employment at Sun Valley from

²The Court dismissed defendants Mayor DeWayne Briscoe and Councilman Nils Ribi on November 26, 2013, because there is no individual liability under the Whistleblower Act.

³Hammer had previously sued and then voluntarily dismissed Sun Valley and various officials based upon similar allegations, in Blaine County Case No. CV-2011-928 (J. Elgee). She had also filed a claim against Sun Valley, Ribi and Briscoe with the Idaho Human Rights Commission, also based on similar allegations. It is undisputed that Hammer knew of the

June 1, 2008, until her discharge on January 19, 2012, she was harassed by Councilman Nils Ribi, which she asserts she reported to various Sun Valley officials and in retaliation she was placed on administrative leave, investigated, then terminated. (Complaint, ¶¶ 31-38.) Her Complaint conveniently ignores the waiver language in her Employment Agreement and the fact that she received a six-month severance in exchange for releasing this very claim.

B. Hammer's Termination

Mayor Briscoe was sworn into office as the new Sun Valley mayor on January 3, 2012. (Complaint at 29, ¶ 143.) As is common with new administrations, he made the determination that he could not work with the prior mayor's chosen city administrator. Instead, as was his prerogative as mayor, Mayor Briscoe decided he would rather vet and hire his own person for that important position, with whom he would necessarily have a close working relationship.⁴ (Declaration of Kirtlan G. Naylor, Ex. A (Briscoe Depo Tr. at 129:4 - 130:8); Ex. B (Griffith Depo Tr. at 13:14-24, 15:21-23, 17:1-5, 29:13-21, 33:16-24); Ex. C (Youngman Depo Tr. at 27:24 - 29:6, 82:11 - 83:1); Ex. D (Suhadolnik Depo Tr. at 14:16-24); Ex. E (Ribi Depo Tr. at 171:20 - 172:15)). Thus, on January 19, Hammer's position with Sun Valley was terminated under the "without cause" provision of her Employment Agreement, under which she executed a Release of all claims against Sun Valley and received a six month severance payment, as set forth above.

allegations that form the basis of the present lawsuit at the time she was terminated and signed the Release.

⁴Under Idaho Code § 50-206, appointed officers (such as Hammer) may be removed by the mayor for any reason "deemed sufficient" with the affirmative vote of half the full city council plus one. Alternatively, a city council may upon its own initiative remove an appointed official by unanimous vote.

SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 5.

C. Related Federal Case

Hammer also brought a related federal action against Sun Valley, Briscoe and Ribi, wherein she alleged fourteen claims for gender discrimination and harassment, retaliation, due process violations (both procedural and liberty interest), conspiracy, assault, wrongful termination, breach of contract and negligent infliction of emotional distress. *See Hammer v. Sun Valley*, Case No. 1:13-cv-21-EJL. That case is still pending, but substantially overlaps with the present Whistleblower case, especially with respect to the Employment Agreement and Release. The Honorable Edward J. Lodge, United States District Judge, significantly narrowed the federal case by dismissing all but two claims based on the plain and unambiguous language of the very same Employment Agreement and Release at issue here. (Naylor Decl. Ex. I ("Lodge Decision"))

In Judge Lodge's words: "the language of the contract could not be clearer. The waiver/release was to 'any and all claims' without any limitations." (Lodge Decision at 17) (emphasis added). Thus, Judge Lodge dismissed nearly all of Hammer's claims existing against Sun Valley at the time of her termination. Notably, Judge Lodge's dismissal included claims for retaliation closely mirroring Hammer's Whistleblower claim here. Only Hammer's claims for assault (which does not involve Sun Valley) and liberty interest violation (which accrued after the release) remain in the federal lawsuit.⁵

D. Other Ongoing Sun Valley Matters

While Hammer's termination was because Mayor Briscoe determined he could not work with her and would rather vet and hire his own City Administrator, there were other ongoing Sun Valley

⁵Hammer moved for reconsideration but no decision has been entered yet on that motion. Additionally, defendants moved for summary judgement on the remaining two claims, which is also pending.

matters under investigation, which did in part relate to her being placed on paid administrative leave. These matters were not, however, the cause of Hammer's termination.

To put these events in context, the starting point is the fall of 2011. On October 5, 2011, then-Sun Valley Treasurer Michelle Frostenson met with then-Mayor Wayne Willich and expressed concerns she had about possible City mismanagement. (Naylor Decl., Ex. F (Frostenson Depo Tr. at 15:22 - 16:14, 25:11 - 37:19); Ex. B. (Willich Depo Tr. at 11:14 - 14:3)) Frostenson again raised the same issues to Councilman Ribi on or about November 10 because she did not believe Mayor Willich had adequately addressed her concerns. (Frostenson Depo Tr. at 15:22 - 16:6; 53:14-22; Ex. C (Ribi Depo Tr. at 26:14 - 32:9)) Ribi contacted Councilman Bob Youngman and Councilman/Mayor-Elect DeWayne Briscoe⁶ regarding these same matters and a City Council special executive session was called for November 11, 2011. (Complaint at 26, ¶ 129.)

During the November 11 executive session, Frostenson presented her allegations to the Mayor and City Council. (Complaint at 26, ¶ 130; Briscoe Decl., Ex. A.⁷) Afterwards, Mayor Willich and Adam King, the City Attorney, met with Hammer, presented the allegations that had been made against her and proposed that she resign in exchange for a severance payment. (Complaint at 26, ¶ 131.) Hammer turned down the offer. (Complaint at 27, ¶ 133.)

On November 13, Hammer's husband/attorney, James R. Donoval, delivered to the Sun Valley City Council and Mayor Willich a letter, dated November 12, threatening litigation regarding

⁶Briscoe defeated Willich in the Mayoral race on November 8, 2011. Additionally, Franz Suhadolnik and Michelle Griffith were elected as new City Council members, replacing Mayor Briscoe (due to his vacancy) and Joan Lamb.

⁷Mayor Briscoe's declaration is attached as Exhibit J to the declaration of Kirtlan Naylor.

Ribi's alleged harassment, and in the event of any disciplinary action against Hammer. (Complaint at 27, ¶ 136; Briscoe Decl., Ex. B.)

On November 14, the City Council conducted a follow-up executive session. (Complaint at 27, ¶ 137.) The City Council voted to engage an attorney to conduct an independent investigation into the allegations being made. (Briscoe Decl., Ex. A at SV 2070.)

Donoval sent Sun Valley a second letter, dated November 15, again threatening a lawsuit in connection with Hammer's allegations of harassment by Ribi and the City's intent to conduct an investigation. (Briscoe Decl., Ex. C.) Donoval followed up with a third letter, dated November 16, which actually applauded the decision to conduct an internal investigation, yet still threatened a lawsuit unless Sun Valley agreed to Hammer's absurd settlement terms, which included Ribi's resignation, a six-figure payment to Hammer, and a promise that Ribi would never contact Hammer again, otherwise he would be subjected to a hundred thousand dollar punitive damage assessment. (Briscoe Decl., Ex. D.)

On November 18, Mayor Willich placed Hammer on non-disciplinary paid administrative leave, pending the outcome of the investigation. (Briscoe Decl., Ex. E.) Hammer responded by filing a Whistleblower Claim (the first Whistleblower action) in Blaine County Case No. CV-2011-928, which was later voluntarily dismissed. She also filed a complaint with the Idaho Human Rights Commission. (Complaint at 28, ¶ 139.)

Sun Valley hired Patricia Ball⁸ on or about November 21 to conduct the investigation. The "Ball Investigation" occurred over the next several weeks and, with authorization from Mayor

⁸While Ms. Ball is an attorney, her investigation was not done in the capacity of a legal representative.

Willich, expanded into a broader inquiry of Sun Valley financial issues, Fire Department issues, and Hammer's allegations of harassment by Ribí. (Briscoe Decl., Ex. F.) (Filed Under Seal)

On December 16, Mayor Willich provided authorization for the Blaine County Prosecuting Attorney to be notified about "information and facts discovered in an employment investigation that may be the subject of criminal conduct." (Briscoe Decl. Ex. I.) He also issued to Hammer a "NOTICE OF CONTINUED PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION", along with a Garrity Notice. (Briscoe Decl., Ex. G and H) (emphasis original).

The Ball Investigation then culminated in a December 20, 2011 report known as the "Ball Report"⁹ (*id.*). With respect to Hammer, the Ball Report concluded that "[s]ufficient evidence exists to support multiple violations of City policy by Hammer[]" and that "[t]hese matters should be immediately referred to an outside agency for further audit and investigation of possible civil and/or criminal violations." (*Id.* at BALL 3.) After receiving the Ball Report, but before Ball actually presented it to the Mayor and City Council, Mayor Willich decided that he disagreed with the report and recommendations Ball made and therefore unilaterally brought Hammer back from paid administrative leave on December 27. (Complaint at 28, ¶¶ 141-142.)

Briscoe took office as Sun Valley's new Mayor on January 3, 2012. (Complaint at 29, ¶ 143.) The next day he provided authorization for the Blaine County Prosecuting Attorney to be notified about "information and facts discovered in an employment investigation that may be the subject of criminal misconduct." (Briscoe Decl., Ex. J.) He also issued Hammer a "NOTICE OF PAID ADMINISTRATIVE LEAVE PENDING INVESTIGATION", essentially tracking the language of

⁹The Ball Report actually consists of three separate reports covering allegations involving the Fire Department, Ribí and Hammer. (Briscoe Decl., ¶ 8.) For purposes here, the Ball Report will refer only to the report covering the investigation into Hammer.

former-Mayor Willich's notice. (Briscoe Decl., Ex. K.) Mayor Briscoe also issued Hammer a Garrity Notice. (Briscoe Decl., Ex. L.) Similar notices were issued to other Sun Valley employees in connection with the Ball Investigation findings about the Fire Department. (Briscoe Decl., ¶ 14.)

As noted above, Hammer was terminated on January 19, 2012, because Mayor Briscoe determined he could not work with her and would rather vet and hire his own city administrator. Afterwards, Sun Valley issued a press release in the Idaho Mountain Express informing the public that Hammer had been terminated as the City Administrator. (Briscoe Decl., Ex. O.)

In February 2012, shortly after Hammer was terminated, Sun Valley hired the law firm of Moffatt Thomas Barrett Rock & Fields, Chtd., who engaged an independent accounting firm, Hagen, Streiff, Newton & Oshiro, P.C., to conduct a thorough audit of Sun Valley's financial matters from 2009 through 2011. (Briscoe Decl., ¶ 18.) The resulting Forensic Audit was completed in August 2012. The audit found significant problems, including: (a) non-compliance with control and approval of expenditure processes; (b) lack of control over work schedules by salaried exempt employees; (c) exempt employees being paid twice for work performed during normal working hours; (d) exempt employees being paid salaries inconsistent with the personnel manual; (e) problems with the compensation of hourly on-call firefighters; (f) non-compliance with the accrued vacation hour policies; (g) improper use of city property; (h) improper use of city credit cards; (i) inappropriate use of a fuel card; and (j) problems with travel expenses reimbursement. (Briscoe Decl., Ex. P.)

Similarly, on November 21, 2012, the Blaine County Prosecuting Attorney issued a letter to Sun Valley about the criminal investigation initiated months before, which had been performed by Scott Birch, the Attorney General Office's Criminal Investigative Unit Chief. Based upon the criminal investigation, which included a review of Sun Valley documents as well as the Ball Report

SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 10.

and the Forensic Audit, the PA found misconduct by Hammer, but he chose not to pursue criminal charges in light of the heightened burden of proof of "beyond a reasonable doubt." Notably, the PA concluded:

Although no criminal charges will be forthcoming, the investigations revealed serious failures at multiple levels of management and supervision within the City of Sun Valley, including (1) a failure to document; (2) a failure to follow stated policies and procedures; (3) lax management and oversight; (4) poor time accounting; (5) apparent conflicts of interest; and (6) a lack of checks and balances through the claims process.

(Briscoe Decl., Ex. Q.)

Meanwhile, in June 2012 while both the Forensic Audit and criminal investigations were underway, two tort claim notices against Sun Valley and various Sun Valley officials, including Hammer, were settled. These claims were brought by Frostenson and Kelly Ek, a former Sun Valley Clerk. Both claimed that Sun Valley officials, including Hammer, retaliated against them after making allegations of misconduct and financial problems. (Briscoe Decl., ¶ 20.) Sun Valley published press releases about the fact of the settlements in June 2012, which included brief synopses of the allegations. (Briscoe Decl., Exs. R and S.) Both matters were later resolved.

Hammer then filed the present suit on June 29, 2012, and has attempted to confuse these events and conflate them in such a way as to show that Ribí somehow orchestrated a scheme to have her fired in retaliation for reporting his alleged harassment. As shown below, however, Hammer cannot proceed to trial because she waived and then released this claim and, in any event, there is insufficient evidence to support her claim.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Shapley v. Centurion Life Ins. Co.*, 154 Idaho 875 (2013). A defending party may move for summary judgment as to all or any part of the claims against it. I.R.C.P. 56(b).

The initial burden of establishing the absence of a genuine issue of material fact rests with the moving party. *Harris v. State*, 147 Idaho 401, 404-405 (2009). In determining whether this burden has been met, "a court will consider only that material contained in affidavits or depositions which is based upon personal knowledge and which would be admissible at trial." *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 869 (1982). Any disputed material facts is liberally construed in favor of the non-moving party, and the court makes all reasonable inferences in favor of the party resisting the motion. *McCoy v. Lyons*, 120 Idaho 765, 769 (1991).

Upon this initial showing, the burden then shifts to the non-moving party and in order to defeat summary judgment must submit "evidence . . . which contradicts the evidence submitted by the moving party, and which establishes the existence of a material issue of disputed fact." *State Dept. of Agric. v. Curry Bean Co.*, 139 Idaho 789, 792 (2004). Even disputed facts will not defeat summary judgment when the non-moving party fails to establish the existence of an essential element of the case, *Badell v. Beeks*, 115 Idaho 101, 102 (1988), or when a plaintiff fails to establish a prima facie case on which he or she bears the burden of proof. *State v. Shama Res. Ltd. P'ship*, 127 Idaho 267, 270 (1955). Further, the non-moving party "must not rest on mere speculation because

a mere scintilla of evidence is not enough to create a genuine issue of fact." *Harris v. State Dept. of Health and Welfare*, 123 Idaho 295, 298 (1992).

IV. ARGUMENT

A. Hammer Plainly and Unambiguously Waived and Later Released Her Whistleblower Claim Against Sun Valley

Hammer's Employment Agreement is a plain and unambiguous complete recital of the terms and conditions of her employment with Sun Valley. It specifically states that "[t]he text herein shall constitute the entire agreement between the parties." (Employment Agreement § 12.) Relevant here, the Employment Agreement provides that Hammer could be terminated, "without cause, for any reason or no reason." (*Id.*, § 3.) (emphasis added) It further provides that, at the time Hammer executed the agreement, she waived all claims of any kind arising from a termination without cause. (*Id.*) In a separate clause Hammer also agreed that upon receipt of the agreed upon severance payment she would release all claims against Sun Valley. (*Id.*)

Thus, Hammer's present Whistleblower Claim fails for two distinct reasons: first, she waived any claim arising from a termination without cause when she entered into her Employment Agreement with Sun Valley; second, she later released all claims against Sun Valley when she received her six-month severance payment. Summary judgment is therefore appropriate, consistent with the Lodge Decision on the same issues.

1. Hammer's Waiver and Release are Enforceable

It is well settled that "[f]reedom of contract is a fundamental concept underlying the law of contracts." *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499 (1970). It is, therefore, "a general rule of this state and the majority of American jurisdictions that a party may contract to

absolve [herself] from certain duties and liabilities under a contract subject to certain limitations." *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178 (1979).

A legally enforceable contract must manifest mutual assent of the parties to its terms, which must be stated plainly and explicitly, and there must be consideration. *State v. Korn*, 148 Idaho 413, 415 (2009) (citing 17A Am.Jur.2d Contracts § 19 (2d ed. 2009)). When the terms of a contract are clear and unambiguous their interpretation and legal effect are questions of law. *Opportunity, LLC v. Ossewarde*, 136 Idaho 602, 605 (2002) (citing *Idaho v. Hosey*, 134 Idaho 883, 886 (2000)). "The meaning of an unambiguous contract must be determined from the plain meaning of the words." *Id.* The intent of the parties is thus ascertained from the contract language. *Id.* at 607.

Thus, "[w]here preliminary negotiations are consummated by written agreement, the writing supercedes all previous understandings and the intent of the parties must be ascertained from the writing." *Valley Bank v. Christensen*, 119 Idaho 496, 498 (1991) (emphasis added). "If the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract." *Id.*

All contracts must also be supported by valid consideration. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526 (2012). Consideration exists where there is something given in exchange for a promise. While consideration is invalid if it is something to which the other party already has an absolute right, "forbearance to prosecute a disputed claim is good consideration." *Salmeron v. U.S.*, 724 F.2d 1357, 1363 (9th Cir. 1983) (citing 1 Corbin on Contracts § 140 at 595 (1963)). Further, where a contract is in writing the presumption is that it is supported by valid consideration. *Weisel*, 152 Idaho at 526.

2. Hammer Waived Any Claim Arising from a Termination Without Cause Under the Plain and Unambiguous Terms of the Employment Agreement

When Hammer was hired by Sun Valley in June 2008 she executed the Employment Agreement in which she contractually waived any claim that could arise from a future termination without cause. (Employment Agreement § 3.A.) Specifically, the clear and unambiguous language of her Employment Agreement states:

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release against the City of Sun Valley.

(*Id.*) (bold in original, underline added) Accordingly, Hammer cannot maintain her present Whistleblower Action against Sun Valley because she indisputably waived this claim when she executed the Employment Agreement.

3. Hammer Later Released Sun Valley of All Existing Claims Under the Plain and Unambiguous Terms of the Release

The "without cause" provision in Section 3.A of Hammer's Employment Agreement also includes a requirement stating that "receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley." (Employment Agreement, § 3.A.) This release clause is separated from the previously discussed waiver provision, as it allowed Hammer the choice (upon a termination "without cause") to: (1) accept the contractually provided severance payment and consequently release all claims against Sun Valley, regardless of whether they arose from a

termination without cause; or (2) to reject the severance payment and retain the right to pursue all non-waived claims against Defendant City of Sun Valley. (*Id.*)

The plain language of Plaintiff Hammer's Employment Agreement clearly states that receipt of the severance payment is subject to a release of all claims against Defendant. (*Id.*) This release is a conditional term and was only required if Plaintiff Hammer voluntarily took receipt of the severance payment. This is a clear and distinct event from the initial waiver for all claims arising from a termination "without cause". In other words, when Hammer made her choice to accept the severance payment and executed the Release, she released all claims against Sun Valley.

If Hammer wanted to sue Sun Valley, her option at that time was to forego the severance payment and pursue any non-waived legal action she believed she might have. This was a basic risk/reward analysis. In signing the Release and accepting the severance payment, Hammer was guaranteed her six-month severance payment. In exchange for that certainty, she agreed to release any claim for damages available at that time. Alternatively, she could have rejected the severance payment and taken the risk of pursuing a lawsuit against Sun Valley for any un-waived claims.

It is undisputed that on January 23, 2013, Hammer chose the first option and accepted the severance payment in exchange for a release of "all claims against the City of Sun Valley." She is now attempting to seek double-recovery as she has retained her six-month severance payment and also seeks money damages under the Whistleblower Act (as well as her federal court claims). This is contrary to the plain and unambiguous language of her Employment Agreement and Release. Because Hammer has released all claims against Sun Valley – as Judge Lodge has already found – Hammer cannot maintain the present action. Summary judgment is therefore appropriate. The analysis and decision by Judge Lodge is correct, persuasive and can be relied upon by this Court.

SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 16.

B. Hammer's Whistleblower Claim Is Meritless

1. Idaho's Whistleblower Act

For the sake of argument, even if the Court were to analyze Hammer's claim on its merits, it cannot survive summary judgment. The Whistleblower Act is designed to benefit the citizens and protect the integrity of government "by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of law, rule or regulation." I.C. § 6-2101. Specifically, the Whistleblower Act prohibits the governmental employer from taking:

... adverse action against an employee because the employee . . . communicates in good faith¹⁰ the existence of any waste of public funds, property or manpower, or a violation or suspected violation of law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

I.C. § 6-2104(1)(a).

The Whistleblower Act contains an implicit, common-sense requirement that the employer engage in some sort of "predicate act" that triggers the application of the statute in the first place. *Black v. Idaho State Police*, 155 Idaho 570, 574 (2013). Thus, the statute cannot be used as a tool to resolve or take action as a result of political, internal, or organizational issues. It only protects activities directed at reporting or "blowing the whistle" on the predicate act of wrongdoing related to waste or the violation of a law, rule or regulation. *See id.*; I.C. § 6-2101.

¹⁰"For purposes of subsection 1(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous." I.C. § 6-2104(1)(b).

If a plaintiff can establish the existence of a predicate act triggering the application of the Whistleblower Act, the issue becomes whether the plaintiff can set forth sufficient facts to demonstrate a prima facie case for retaliatory discharge. This requires an adequate showing that: (1) the plaintiff was an employee that engaged in or intended to engage in a protected activity; (2) the defendant is an employer that took adverse action against the employee; and (3) there is a causal connection between the protected activity and the employer's adverse action. *Curlee v. Kootenai Cnty Fire & Rescue*, 138 Idaho 391, 464 (2008).

Under *McDonnell Douglas*, once the plaintiff establishes a prima facie case, the burden shifts to the defendant to show that its adverse employment action was for a legitimate, non-retaliatory reason. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801-804 (1973). If the employer meets this burden, the burden shifts back to the plaintiff to prove that the legitimate, non-discriminatory reason the employer proffered is a pretext. *Id.*; see *Hatheway v. Bd. of Regents of Univ. of Idaho*, 155 Idaho 255, 263-264 (2013) and *Frogley v. Meridian Jt. Sch. Dist. No. 2*, 155 Idaho 558, 564 (2013) (both implicitly overruling *Curlee's* summary judgment framework and applying *McDonnell Douglas* burden shifting framework to employment retaliation claims). "A plaintiff may establish pretext either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Frogley*, 155 Idaho at 564.

2. A Portion of Hammer's Claim is Time-Barred

All actions under the Whistleblower Act must be brought "within one hundred eighty (180) days after the occurrence of the alleged violation" I.C. 6-2105(2). Hammer's Complaint was filed June 29, 2012. She therefore cannot proceed on any alleged violation that occurred prior to

January 1, 2012, which is 180 days before the date of her Complaint. *See id.* This necessarily excludes her theories that she was retaliated against by being placed on paid leave and investigated in November and December 2011.

3. Sun Valley Did Not Engage in a Predicate Act Merely Because an Elected Official Allegedly Violated City Policy

Hammer alleges that Councilman Ribi harassed her in violation of Sun Valley's Personnel Policies & Procedures Manual. (Complaint, ¶ 18, Ex. 1 ("Employee Manual")) The Employee Manual includes a "Standard of Conduct" section that, among other things, prohibits work place harassment "in any form, including verbal, physical and visual harassment." (*Id.*, § 27; Employee Manual, § 7.5.) The Complaint rambles on at some length about the alleged violations of the Employee Manual Ribi supposedly engaged in, but they essentially boil down to mere allegations that Hammer and Ribi had several disagreements about a number of work-related issues and at times Ribi would become angry, bang his fists on a table and "verbally chastise her for not doing exactly what he wanted her to do." (*See id.*, ¶¶ 43-126.)

Hammer's deposition testimony echoes the same type of alleged misconduct:

Q. And what was the nature of the harassment?

A. Those allegations are in the complaint.

...

Q. What was the nature of the harassment that you claim Nils Ribi did?

A. The bigger incidents are in the complaint. The nature of his harassment was to try to intimidate me into doing what he wanted me to do. He had a pattern of coming by City Hall during the lunch hour when he knew that the mayor and most of the other City employees were not in City Hall. He would stand in my doorway and try to intimidate me into doing things that he -- I had not been directed to do by the mayor. When I would suggest that he talk to the mayor, because it was very -- made clear to

me that my direction came from the mayor, he got very agitated. He would raise his hands and lean through the doorway and shake his hands and say, "No. No. You don't understand." He yelled at me that the mayor did not know what his job was.

(Naylor Decl., Ex. H, Hammer Depo Tr. at 187:7 - 188:6.)

In other words, Hammer's allegations comes down to her belief that Ribi would at times become angry over work-related disputes. Even assuming this conduct violated the Employee Manual, it certainly does not trigger application of the Whistleblower Act. Indeed, the Idaho Supreme Court has rejected taking an expansive view of what constitutes a violation of a law, rule or statute necessary to implicate the Whistleblower Act. *Mallonee v. State*, 139 Idaho 615, 620 (2004). Under the plain language of the statute, the *Mallonee* court ruled that there must be a violation of laws, rules or regulations that had been properly promulgated by an administrative body giving them the force and effect of law. *Id.* Where no such promulgation has occurred, a violation of a city policy simply does not amount to a predicate act. *Id.* at 620-621. Thus, merely violating an internal city policy does not trigger application of the Whistleblower Act. *See id.*

Consequently, while reporting an alleged assault or status-based harassment may be a predicate act for purposes of the Whistleblower Act, Hammer cannot proceed to trial under any theory that Ribi merely violated the Employee Manual.

4. Hammer Cannot Demonstrate a Prima Facie Case

Even to the extent Hammer could show a Sun Valley official engaged in a sufficient predicate act to implicate the Whistleblower Act, she still cannot adequately demonstrate a prima facie case to warrant trial.

a. **Placing an Employee on Paid Administrative Leave
Pending an Investigation Is Not Adverse Action**

The Whistleblower Act plainly states what constitutes an adverse action: "to discharge, threaten or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions or privileges." I.C. § 2103(1).

Sun Valley does not dispute that termination is an adverse action. However, placing an employee on paid administrative leave pending an investigation is not. As the Rhode Island Supreme Court very recently explained in finding that similar action as here did not violate that state's nearly identical whistleblower statute,¹¹ "[t]he use of paid administrative leave provides a reasonable means of immediately neutralizing a potentially contentious situation while minimally affecting the [employee]." *Russo v. State, Dept. of Mental Health, Retardation and Hospitals*, 87 A.3d 399, 407 (R.I. 2014) (internal quotations omitted).

The *Russo* court further discussed how its decision was bolstered by the fact that under federal case law, to be actionable, an adverse employment action must be "materially adverse in order to 'prevent lawsuits based upon trivial workplace dissatisfactions' or 'bruised 'ego[s].'" *Id.* (quoting *White v. Burlington Northern & Santa Fe Railway Co.*, 364 F.3d 789, 795, 797 (6th Cir. 2004) (en banc) *aff'd by Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006) (requiring that an adverse employment action must be material). Thus, consistent with the wording of the Idaho Whistleblower Act, actionable adverse actions include (other than the obvious

¹¹Rhode Island's Whistleblower Act states "[a]n employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment . . . [because the employee engaged in protected activity.]" R.I. Gen Laws § 28-50-3.

discharge) such things as change in salary, benefits, responsibilities, refusals to hire or promote, reprimands, reassignment with significantly different responsibilities and otherwise inflicting direct economic harm. *Id.* Indeed, "several federal appellate courts have specifically held that administrative leave with pay is not an adverse employment action." *Id.* (citing *Singletary v. Missouri Dept. of Corr.*, 423 F.3d 886, 891-892 (8th Cir. 2005); *Kenney v. Merit Syst. Protection Bd.*, 356 Fed. Appx. 394, 396 (Fed. Cir. 2009); *Joseph v. Leavitt*, 465 F.3d 87, 91 (2d Cir. 2006); *Peltier v. United States*, 388 F.3d 984, 988 (6th Cir. 2004); *Von Gunten v. Maryland*, 243 F.3d 858, 869 (4th Cir. 2001); *Breaux v. City of Garland*, 205 F.3d 150 (5th Cir. 2000)).

Idaho's case law is consistent with these other jurisdictions. In fact, the Idaho Supreme Court in *Hatheway*, mandated that to be actionable an adverse employment action must include significant changes in employment. *Hatheway*, 155 Idaho at 265 (citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998); *Kcosis v. Multi-Care Mgmt., Inc.*, 97 F.3d 876, 887 (6th Cir. 1996). Being placed on paid administrative leave pending an investigation does not constitute an adverse action, as in such instances there is no material or significant changes to the "compensation, terms, conditions, location, rights, immunities, promotions or privileges" of one's employment. See I.C. § 6-2103(1).

In this case, Hammer was placed on paid administrative leave twice pending the Ball Investigation into the allegations that had been made against her during the November 11, 2011 executive session, as well as a possible criminal investigation pursuant to the authority given by former-Mayor Willich on December 16 and reiterated by Mayor Briscoe on January 3, 2012. As numerous jurisdictions have made clear, such paid administrative leave does not constitute an adverse action. Rather, it was Sun Valleys' means to neutralize contentious situation with minimal

effect on Hammer's employment. As such, while Sun Valley does not dispute that termination is an adverse act, Hammer cannot base her Whistleblower Act claim on merely being investigated while on paid leave.

b. Not All of Hammer's Reporting Qualifies as a Protected Activity

As discussed above, merely violating a city policy does not constitute a predicate act and thus does not trigger application of the Whistleblower Act. *See* Section 3.b, *supra*. It follows that reporting conduct that does not constitute a predicate act is likewise insufficient to create liability. *See* I.C. § 6-2104(1)(a) (requiring reporting in good faith the existence of waste, or violation or suspected violation of law, rule or regulation). Hammer therefore cannot support this element of her cause of action merely by showing that she reported Ribí's conduct that was allegedly in violation of the Personnel Manual.

c. Hammer Cannot Demonstrate That Her Termination Was Causally Connected to Complaining About Ribí's Conduct

Hammer claims that she was terminated because from 2008 through 2011 she reported harassment by Ribí to Mayor Willich, Adam King and Cam Daggett. Even viewing the evidence in a light most favorable to Hammer, however, her contentions are belied by the actual evidence in the record. To reiterate, Mayor Briscoe was sworn into office as the new Sun Valley mayor on January 3, 2012. As is common with new administrations, he made the determination that he could not work with the prior mayor's chosen city administrator. Instead, as was his prerogative as mayor, he decided he would rather vet and hire his own person for that important position, with whom he would necessarily have a close working relationship. Thus, on January 19, Hammer's position with Sun

Valley was terminated under the "without cause" provision of her Employment Agreement, for which she executed a Release of all claims against Sun Valley and received a six month severance payment.

Hammer cannot create a triable question of fact as to causation simply by claiming that beginning over three years prior to her termination she complained about alleged harassment by Ribí. In fact, no Council Member testified that such was a reason for her termination. Rather, her termination was related to the change in administration and Mayor Briscoe's determination to hire his own City Administrator. Hammer's mere speculation that she was discharged in retaliation for complaining about Ribí is insufficient to show a prima facie case for retaliatory discharge.

5. Sun Valley Had a Legitimate, Non-Discriminatory Reason to Discharge Hammer

As detailed above, Mayor Briscoe decided that he wanted to hire his own city administrator because he could not work with Hammer. She was therefore terminated under the without cause provision of her Employment Agreement and received her six-month severance payment.

6. Hammer Cannot Show that Sun Valley's Reason for Her Discharge Was a Pretext

Because Sun Valley had a legitimate, non-discriminatory reason to discharge Hammer, the burden shifts to her to adequately show that Sun Valley's reason was a pretext. "A plaintiff may establish pretext either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Fogley*, 155 Idaho at 564 (quoting *Texas Dept. of Comty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981)).

a. There is Insufficient Direct Evidence of Pretext

Direct evidence may exist in retaliatory discharge cases where the "evidence, if believed, proves the fact without inference or presumption." *Id.* at 565 (internal quotations omitted). In other words, the evidence must require the conclusion that the defendant unlawfully retaliated against the plaintiff. *Id.* This typically requires some overt statement. *See id.* For example, in one age discrimination suit an employer issued a memorandum to management saying to "Fire Early – he is too old." *Id.* (discussing *Merritt v. Dillard Paper Co.*, 120 F.3d 1181 (11th Cir. 1997)). This direct statement thus requires no inferences as it directly showed that the employer's proffered reason for firing that employee was a pretext. This type of evidence is rare in retaliatory discharge cases. *Id.* at 567.

There is simply no similar direct evidence in this case that would show Sun Valley's reason for discharging Hammer was a pretext. Absent such evidence, Hammer cannot create a triable issue rebutting Sun Valley's proffered reason for her discharge.

b. There is Insufficient Indirect Evidence of Pretext

Where there is no direct evidence of pretext, a plaintiff "may come forward with circumstantial evidence that tends to show that the employer's proffered motives were not their actual motives because they are inconsistent or otherwise not believable." *Frogley*, 155 Idaho at 567 (internal quotations omitted). However, "such evidence must be substantial and specific." *Id.* (emphasis added). "[I]ndirect evidence is not substantial and specific where no evidence beyond what is produced to satisfy the plaintiff's prima facie case is produced. *Id.* And "[c]ourts only require an employer [to] honestly believed its reason for its actions, even if its reason is foolish or trivial or even baseless." *Id.* (internal quotations omitted). Summary judgment is therefore appropriate where

SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 25.

the plaintiff fails to show that the defendant did not honestly believe its proffered reasons for its actions. *Id.*

There is simply no such evidence in this case. Rather, the evidence merely shows that the only thing that happened at all related to Hammer reporting alleged harassment by Ribi is that Sun Valley broadened the Ball Investigation to include looking into those allegations. Hammer's theory that Ribi had some grand plan to get her fired, for which he recruited various other city officials and employees to execute, is pure speculation. Hammer cannot meet her burden to show pretext by relying on her baseless accusations.

C. Hammer's Remedies are Limited By the Whistleblower Act

If the Court allows Hammer to proceed to trial on any portion of her Whistleblower claim, it should nevertheless grant partial summary judgment to Sun Valley with respect to the scope of Hammer's potential recoverable damages. Specifically, Hammer claims that she has suffered "severe economic damages" and is entitled to her "loss of past and future wages, retirement benefits, medical benefits, other fringe benefits, and other losses to be proven at trial[.]" and also seeks recovery for her "emotional damages, including but not limited to public ridicule, contempt, and hatred; embarrassment, emotional pain and suffering; and loss of enjoyment of life." (Complaint at 32, ¶ 169.) Thus, Hammer indicates that she is entitled to recovery any type and category of damages she can prove as a result of her termination if a jury finds her termination was in violation of the Whistleblower Act. Such broad recovery, however, is not authorized under the statute.

Instead, the Whistleblower Act explicitly limits the scope of recoverable damages to a finite enumerated list of special damages, and does not allow for general damages at all. Initially, the statute defines "damages" to include "injury or loss caused by each violation of this chapter, and

includes court costs and reasonable attorneys' fees." I.C. § 6-2105(1). It then states that "[a]n employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both. . . ." I.C. § 6-2105(2). The statute goes on to list the specific remedies that are available, stating:

A court, in rendering a judgment brought under this chapter, may order any or all of the following:

- (1) An injunction to restrain continued violation of the provisions of this act;
- (2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position;
- (3) The reinstatement of full fringe benefits and seniority rights;
- (4) The compensation for lost wages, benefits and other remuneration;
- (5) The payment by the employer of reasonable costs and attorneys' fees;
- (6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general fund.

I.C. § 6-2106 (emphasis added).

Thus, the statute only allows the court to order "any or all" of these express and specific remedies; it does not provide for any other type of relief. Although the initial providing for damages or equitable relief seems general, *see* I.C. § 6-2105, it must be read in conjunction with the more specific provisions of I.C. § 6-2106, which plainly and explicitly sets forth the remedies that a court may order for an employee. *See Wheeler v. Idaho Dept. of Health and Welfare*, 147 Idaho 257, 263-264 (2009) (stating that the court "must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the legislature."). Reading the provisions together, Section 2105 authorizes damages and/or specific relief, and Section 2106 lists the types

relief the court may order. To read the Whistleblower Act so broadly as to provide the broad and unenumerated relief sought by Hammer would require the Court to effectively nullify Section 2106.

In this case, Hammer does not seek the equitable relief authorized under subsections (1) through (3) (nor would it be appropriate here) and therefore in the unlikely event Hammer were to prevail she would only be allowed to recover her reasonable costs and attorney fees and "compensation for lost wages, benefits and other remuneration." I.C. § 6-2106(4), (5).

At least one Idaho district court has found that the Whistleblower Act limits the scope of recoverable damages such that damages do not include pain and suffering or front pay. *See Van v. Portneuf Med. Ctr., Inc.*, 156 Idaho 696, 1065 (2014) (*Van II*). That issue was appealed but the Idaho Supreme Court declined to consider it because the court found no liability. *Id.* Nevertheless, the district court's decision in *Van II* was correct. Nothing in Section 2106 can be read as a "make-whole" remedy. It contains no reference to pain and suffering or any other general damages Hammer believes she is entitled to. It also does not refer to front pay extending to Hammer's retirement as her claims suggests. Instead, it contains a list of six enumerated remedies, to the exclusion of all others. Thus, Hammer is not entitled to the broad relief she seeks. Consequently, in the event any portion of her Whistleblower Act claim proceeds, the Court should take this opportunity to grant partial summary judgment in favor of Sun Valley with respect to Hammer's damages.


V. CONCLUSION

As shown above and in the accompanying materials, summary judgment is appropriate in this case.

DATED this 20th day of November, 2014.

NAYLOR & HALES, P.C.

By


Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of November, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

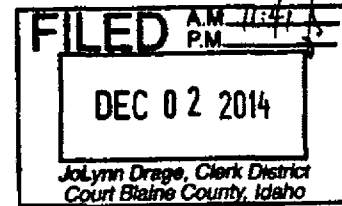
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SUN VALLEY'S CORRECTED MSJ MEMORANDUM - 29.



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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**SUN VALLEY'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Defendant, the City of Sun Valley ("Sun Valley"), by and through its counsel, Naylor & Hales, P.C., hereby submits this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. As shown below, Plaintiff's motion must be denied.

I. INTRODUCTION

On November 18, 2014, Sun Valley moved for summary judgment on the basis that Plaintiff Sharon R. Hammer ("Hammer") waived and later released her present Whistleblower claim pursuant
SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 1.

to the plain and unambiguous terms of her 2008 Employment Agreement and 2012 Release.¹ In a related federal case, Judge Lodge has already analyzed those documents at length and ruled that they clearly foreclosed Hammer from bringing similar federal retaliation claims under the United States Constitution and the Idaho Human Rights Act.

Nevertheless, Hammer has now moved for summary judgment on two of Sun Valley's defenses, contending primarily that the same dispositive waiver and release in the related federal case are illegal because they purportedly violate public policy. In the alternative, Hammer argues that she did not knowingly and voluntarily agree to a waiver or release of her Whistleblower claim, but rather only contracted away a claim arising from a dispute over the severance payment she received in exchange for her release.

Hammer's arguments are meritless. As discussed in more detail below, she cites to no controlling authority whatsoever for the proposition that one cannot waive or release a claim under the Whistleblower Act. Instead, she relies on unrelated case law involving pre-injury waiver of personal injury claims, and which expressly limits its holding to such settings. Additionally, Hammer's Employment Agreement and Release are fully integrated, plain and unambiguous written contracts (the later of which her attorney drafted) and she cannot rely upon extrinsic evidence to alter, change or modify the easily understandable language therein. Even so, it is apparent she voluntarily waived and later released this claim. Simply put, Hammer's arguments fail and her motion must be denied.

¹Sun Valley hereby incorporates by reference its own summary judgment briefing and related materials.

II. ARGUMENT

A. The Waiver and Subsequent Release Did Not Violate Public Policy

It is well-settled that "[f]reedom of contract is a fundamental concept underlying the law of contracts." *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499 (1970). It is, therefore, "a general rule of this state and the majority of American jurisdictions that a party may contract to absolve himself from certain duties and liabilities under a contract subject to certain limitations." *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178 (1978). In other words, the general rule is that exculpatory clauses are valid, but there are exceptions, one of which is where the exculpatory clause violates public policy. *See, e.g., Lee v. Sun Valley Co.*, 107 Idaho 976, 978-979 (1984). Whether a contract violates public policy is a question of law. *Hyta v. Finley*, 137 Idaho 755, 757 (2002).

Hammer relies on *Lee, supra*, to support her argument that her waiver and release contravene public policy. That case, however, does not support Hammer's argument. There, the plaintiff participated in a horseback ride put on by a licensed outfitter and guide. *Id.* at 977. Prior to riding, the plaintiff signed an agreement stating that she would hold the outfitter harmless from all claims arising from any injuries that might occur from use of the horse and equipment. The outfitter readjusted the horse saddle and, during the ride, the horse reared and plaintiff fell off, sustaining injuries. *Id.* The plaintiff sued the outfitter for damages and the district court granted summary judgment for the outfitter based on the pre-injury hold harmless agreement. *Id.* at 977-978.

The Idaho Supreme Court found that the waiver did not exempt the outfitter from liability based on its holding that:

SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 3.

We do not attempt to articulate a general rule applicable to all statutes. However, we do hold that where the legislature has addressed the rights and duties pertaining to personal injuries arising out of the relationship between two groups, i.e., employers/employees, outfitters and guides/participants, and has granted limited liability to one group in exchange for adherence to specific duties, then such duties become a "public duty" within the exception to the general rule validating exculpatory contracts.

Lee, 107 Idaho at 979 (emphasis added).

Lee plainly does not control here. The Idaho Whistleblower statute simply does not address the rights and duties pertaining to personal injuries and it does not grant limited liability to one group in exchange for adherence to specific duties. Instead, it provides a private cause of action for retaliatory adverse employment action, similar to the Idaho Human Rights Act, Title VII, or Constitutional retaliation claims, all of which can be waived or released. (See Judge Lodge's Decision at 9-18.)

Hammer also ignores the fact that, even if – for the sake of argument only – a prospective waiver of a Whistleblower claim was in violation of public policy, she also later signed a release, which plainly and unambiguously relinquished all claims she had at the time of her termination. Hammer has shown nothing to indicate how such a release would violate public policy and, indeed, she could not as it makes no sense to forbid the resolution of existing claims.

Overall, Hammer attempts to create an incredibly broad and legally unsupported exception to the general rule that exculpatory clauses are legal and enforceable. And she does so by relying on inapposite case law dealing exclusively with personal injuries and statutory-based limited liability provisions. This "one-size-fits-all" approach is unavailing. Because the general rule allows exculpatory clauses and there is no contrary authority in Idaho for the proposition that an employee

cannot waive or release a Whistleblower claim, Hammer's motion for summary judgment must be denied.

B. Hammer Cannot Rely On Extrinsic Evidence to Alter the Plain Meaning of Her Employment Agreement and Release

Hammer contends that even if she could release a Whistleblower claim, she did not have "voluntary intent" to do so here. (Plf's Memo at 12, 15-17.) She also contends that the waiver and release are invalid because they do not specifically state Hammer was relinquishing a Whistleblower claim. Instead, despite the plain and unambiguous language in the Employment Agreement and Release, Hammer argues their scope "extended only to claims arising out of a dispute related to the severance package." (Plf's Memo at 15.) She has provided the Court with her own declaration, with several exhibits, her husband/attorney James R. Donoval's declaration, and the declaration of former mayor Wayne Willich, all of which she contends shows what she believes is the true meaning of the Employment Agreement waiver and the Release.

These materials, however, are inadmissible. Exculpatory clauses are subject to the normal rules of contract interpretation. Relevant here is the parol evidence rule, which provides that "[w]here preliminary negotiations are consummated by written agreement, the writing supercedes all previous understandings and the intent of the parties must be ascertained from the writing." *Valley Bank v. Christensen*, 119 Idaho 496, 498 (1991) (emphasis added). Further:

If the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract. It is well established in Idaho that [o]ral stipulations, agreements, and negotiations preliminary to a written contract are presumed merged therein and will not be admitted to contradict the plain terms of the contract.

Id. (internal quotations omitted).

SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 5.

As detailed in Sun Valley's moving papers, there is no dispute here that the Employment Agreement and Release are complete upon their face and that there is no fraud or mistake being alleged. The Employment Agreement waiver plainly and unambiguously states that Hammer waived her right to bring a "claim of any kind against [Sun Valley] arising from a termination without cause." (Robertson Decl., Ex. A at SV 62.) And Hammer plainly and unambiguously released Sun Valley from "any claims" defined in the Employment Agreement "as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008. (Robertson Decl., Ex. C.) Such intent can only be found through the fully integrated Employment Agreement and Release.

Nevertheless, Hammer attempts to get around this straightforward rule by arguing that the waiver and release are vague or ambiguous because they do not specifically state that Hammer was relinquishing a claim under the Whistleblower Act. (Plf's Memo at 16.) She has consequently submitted extrinsic evidence purporting to show what she (as well as Donoval and Willich) subjectively understood her Employment Agreement and Release to mean. It is difficult to understand why Hammer fails to grasp the plain and unambiguous language of her waiver and release. As Judge Lodge stated: "the language of the contract could not be clearer. The waiver/release was to 'any and all claims' without any limitations." (Lodge Decision at 17) (emphasis added).

Further, there is no requirement in that an exculpatory clause of this kind must specifically identify the claim being released. Indeed, the language quoted by Hammer in support of this proposition merely states that exculpatory clauses "must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue." *Jesse v. Lindsley*, 149 Idaho 70, 75 (2008).

SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 6.

This standard is plainly satisfied by the language of the Employment Agreement and Release, as quoted above, and Hammer's argument to the contrary is simply meritless.

C. The Waiver and Release Were Made Knowingly and Voluntarily

When significant federal constitutional or civil rights are waived or released, it must be done knowingly and voluntarily. *E.g., Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1989). In those cases courts will look to the totality of the circumstances to ensure proper waiver. Sun Valley is not aware of any similar requirement in Idaho related to the waiver or release of a state Whistleblower claim. As noted above, under basic contract principles, the intent of the parties is ascertained in a complete, plain and unambiguous written contract from within its four corners. Extrinsic evidence cannot be used to "contradict, vary, alter, add to or detract from the terms of the written contract." *Valley Bank*, 119 Idaho at 498.

There is no reason here to vary from Idaho's well-settled contract law. Even were the Court to look outside of the Employment Agreement and Release it is clear that Hammer knowingly and voluntarily waived and later released her Whistleblower claim. In Judge Lodge's apt words:

... The Court finds the totality of the circumstances evidences that Ms. Hammer made a voluntary, deliberate and informed waiver of any and all of her claims when she accepted the agreed to severance payment. Ms. Hammer signed the release after being advised by her legal counsel and husband on the matter. The plain and unambiguous terms make abundantly clear that the acceptance of the severance payment waives and/or releases any and all claims Ms. Hammer may have had for damages arising from her termination. Although Plaintiffs [Donoval and Hammer] now argue they did not know or intend to give up their non-contract tort and constitutional claims, the fact remains that the plain and express terms of the documents they signed clearly state otherwise. Ms. Hammer is a knowledgeable person who worked in a professional capacity for the City for several years and was advised by her legal counsel and husband before signing the release. Had the Plaintiff's believed and/or intended something other than what was plainly and explicitly stated in the written documents they could have and should have included language to that effect in the documents themselves.

SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 7.

(Lodge Decision at 15-16) (brackets added) This reasoning is just as sound when applied to Hammer's present Whistleblower claim as it is when applied to her other claims in federal court.

III. CONCLUSION

As shown above, and in Sun Valley's own summary judgment materials, Hammer's motion for summary judgment must be denied.

DATED this 2nd day of December, 2014.

NAYLOR & HALES, P.C.

By


Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of December, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

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Kirtlan G. Naylor

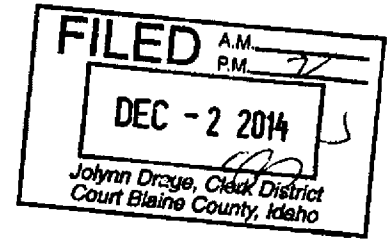
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SUN VALLEY'S OPPOSITION TO PLAINTIFF'S MSJ - 8.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**PLAINTIFF'S RESPONSE TO
SUN VALLEY'S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Sharon R. Hammer has sufficiently pled and herein submits evidence of a *prima facie* case of retaliation against her by Defendant City of Sun Valley ("Sun Valley," "City" or "Defendant") in violation of the Idaho Protection of Public Employees Act, Idaho Code §§ 6-2101, *et seq.* ("IPPEA"). Ms. Hammer also submits argument and evidence refuting Sun Valley's claim that she has previously waived or released the rights and privileges afforded by Idaho's legislature pursuant to the IPPEA. The evidence of record does not support any

aspect of Sun Valley's Motion for Summary Judgment. For the reasons below, that Motion should be denied.

II. STATEMENT OF MATERIAL FACTS WHICH ARE IN DISPUTE

Ms. Hammer submits this section, Statement of Material Facts Which Are in Dispute, in response to Sun Valley's Section II, Background. (Def's. Corrected MSJ Mem., § II, pp. 3-11.) Ms. Hammer also incorporates her Statement of Undisputed Material Facts, and all citations in support thereof, as set forth in Section II of the MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Pltf's MSJ Stmt of Facts"), filed on November 18, 2014, as if set forth in full herein.

Ms. Hammer raises disputed issues of material fact, as follows:

1. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., pp. 3-4. Plaintiff disputes that the Employment Agreement, as presented by Defendant, is a true and correct copy of that document because it is missing the last page.¹

2. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 4. Plaintiff disputes that she was terminated from her position at Sun Valley under the "without cause" provision of her Employment Agreement, as claimed by Defendant.² Sun Valley and various officials and representatives had been named by Ms. Hammer as defendants in lawsuits, notices of tort claims, and charges of discrimination to the Idaho Human Rights Commission.³ Mayor Briscoe submitted sworn testimony in the 2011 IPPEA Case enumerating

¹ AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Pltf's MSJ Aff. of Hammer"), filed on November 18, 2014, Ex. 1.

² Pltf's MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

³ Pltf's MSJ Stmt of Facts, ¶¶ 12, 16, 17, 20.

purported reasons why he placed Ms. Hammer back on leave.⁴ And, Mayor Briscoe later testified that a majority of those reasons could be cause for terminating Ms. Hammer.⁵ On January 25, 2012, the Idaho Mountain Express reported: “When asked whether Hammer’s termination was with or without cause, Naylor said, ‘There was no stated cause.’”⁶ Even Mr. Naylor’s quote that, “[t]here was no **stated** cause,” implies that some cause did exist, but Sun Valley would not, or could not, be publically forthright about that cause.⁷ Further, Defendant’s actions and the publicity it generated regarding Ms. Hammer’s personnel matters, the investigations into the allegations lodged against her, and the bias existing within Sun Valley toward her all evidence that Sun Valley only **purportedly** terminated her without cause.⁸

3. Plaintiff disputes certain alleged facts contained at Def’s. Corrected MSJ Mem., p. 4. Plaintiff disputes that after she received the severance payment from Sun Valley they “parted ways,” as claimed by Defendant.⁹ Following her termination from Sun Valley, Defendant has engaged in a campaign to ruin Ms. Hammer’s personal and professional reputations.¹⁰ Before and after Ms. Hammer’s termination, Mr. Ribí maintained a website and a blog, both of which recounted and discussed allegations of misconduct, criminal conduct, and alleged harassment of other Sun Valley employees by Ms. Hammer.¹¹ As a result of the large amount of publicity that Defendant generated leading up to and following Ms. Hammer’s

⁴ Pltf’s MSJ Stmt of Facts, ¶ 23.

⁵ AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT (“Pltf’s MSJ Aff. of Counsel”), filed on November 18, 2014, Ex. 25, Briscoe Dep. 88:20-108:14.

⁶ AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF’S RESPONSE TO SUN VALLEY’S MOTION FOR SUMMARY JUDGMENT (“Pltf’s Resp. Aff. of Counsel”), filed contemporaneously herewith, Ex. 2; Pltf’s MSJ Aff. of Counsel, Ex. 25, Briscoe Dep. 152:20-158:14, 166:9-19, 168:3-169:1.

⁷ See Pltf’s MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

⁸ Def’s Corrected MSJ Mem. § II; Pltf’s Stmt of Disputed Facts.

⁹ Pltf’s Resp. Aff. of Counsel, Ex. 1, ¶¶ 12-17; Pltf’s MSJ Stmt of Facts, ¶¶ 13-14, 21-23, 27-29.

¹⁰ Pltf’s MSJ Stmt of Facts, ¶¶ 13-14, 21-23, 27-29; Pltf’s Resp. Aff. of Counsel, Ex. 1, ¶¶ 12-17.

¹¹ Pltf’s MSJ Aff. of Counsel, Ex. 26, Ribí Dep. 159:23-161:4; 173:4-175:9.

termination, she has been unable to obtain employment in her chosen career field of local management administration.¹²

4. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 4. Plaintiff disputes that she "agree[d] not to sue Sun Valley," as claimed by Defendant.¹³ In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, there was no intent by either party that Ms. Hammer was waiving or would waive any constitutional or statutory rights, or claims of discrimination, harassment, retaliation, or tort.¹⁴ In January 2012, when Ms. Hammer signed the Supplemental Release, she had no intent to relinquish any constitutional or statutory rights or waive any of the claims alleged in the present IPPEA case.¹⁵

5. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 5. Plaintiff disputes that "she received a six-month severance in exchange for releasing [her claims under the IPPEA]," as stated by Defendant.¹⁶ Plaintiff incorporates by reference paragraph 4, above, herein.

6. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 5. Plaintiff disputes that she was terminated from her position at Sun Valley under the

¹² Pltf's Resp. Aff. of Counsel, Ex. 1, ¶¶ 12-17.

¹³ Pltf's MSJ Stmt of Facts, ¶¶ 30-37; Pltf's MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22; AFFIDAVIT OF WAYNE WILICH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Pltf's MSJ Aff. of Willich"), filed on November 18, 2014, ¶¶ 2-3, 5-10; AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Pltf's MSJ Aff. of Donoval"), filed on November 18, 2014, ¶¶ 4-9 and Exs. 1-3.

¹⁴ Pltf's MSJ Stmt of Facts, ¶¶ 35-36.

¹⁵ Pltf's MSJ Stmt of Facts, ¶¶ 31-33, 37.

¹⁶ Pltf's MSJ Stmt of Facts, ¶¶ 30-37; Pltf's MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22; Pltf's MSJ Aff. of Willich, ¶¶ 2-3, 5-10; Pltf's MSJ Aff. of Donoval, ¶¶ 4-9 and Exs. 1-3.

“without cause” provision of her Employment Agreement, as claimed by Defendant.¹⁷ Plaintiff incorporates by reference paragraph 2, above, herein.

7. Plaintiff disputes certain alleged facts contained at Def’s. Corrected MSJ Mem., p. 5. Plaintiff disputes that “she executed a Release of all claims against Sun Valley,” as claimed by Defendant.¹⁸ Plaintiff incorporates by reference paragraph 4, above, herein.

8. Plaintiff disputes certain alleged facts contained at Def’s. Corrected MSJ Mem., p. 6. Plaintiff disputes that the lawsuit filed with the United States District Court for the District of Idaho, Case No. 1:13-cv-211-EJL, “substantially overlaps with the present Whistleblower case,” as claimed by Defendant. The federal case alleges causes of action arising from the federal defendants’ violations of Ms. Hammer and her husband, James R. Donoval’s, civil rights.¹⁹ The federal case also alleges causes of action based in Idaho common law.²⁰ This case is based on the statutory rights and protection enacted by Idaho’s legislature as the Idaho Protection of Public Employees Act, Idaho Code, §§ 6-2101, *et seq.* The federal court has never had before it a claim of waiver of rights under the IPPEA.²¹ Thus, while both cases arise from the same set of facts, they are different in scope and governing precedent.

9. Plaintiff disputes certain alleged facts contained at Def’s. Corrected MSJ Mem., p. 6. Plaintiff disputes that Judge Lodge “significantly narrowed the federal case by dismissing all but two claims,” as stated by Defendant. The federal decision cited by Defendant has no

¹⁷ Plt’s MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

¹⁸ Plt’s MSJ Stmt of Facts, ¶¶ 30-37; Plt’s MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22; Plt’s MSJ Aff. of Willich, ¶¶ 2-3, 5-10; Plt’s MSJ Aff. of Donoval, ¶¶ 4-9 and Exs. 1-3.

¹⁹ *Sharon R. Hammer and James R. Donoval v. City of Sun Valley, Nils Ribi, and DeWayne Briscoe*, Case No. 1:13-cv-211-EJL, In the United States District Court for the District of Idaho (“*Hammer, et al. v. Sun Valley, et al.*”), DN 1, Complaint and Demand for Jury Trial.

²⁰ *Hammer, et al. v. Sun Valley, et al.*, DN 1, Complaint and Demand for Jury Trial.

²¹ *Hammer, et al. v. Sun Valley, et al.*, DN 1, Complaint and Demand for Jury Trial.

bearing on this case. In response to the federal court's issuance of the referenced decision, Ms. Hammer timely filed PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S MEMORANDUM DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS that is still pending.²² Ms. Hammer also filed PLAINTIFFS' RENEWED MOTION TO AMEND THE SCHEDULING ORDER AND MOTION FOR LEAVE TO AMEND THE COMPLAINT, which is still pending in the federal court.²³ And, Ms. Hammer filed PLAINTIFF SHARON HAMMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT regarding certain federal causes of action and state common law claims that the federal court erroneously dismissed and/or that are expected to be revived when the federal court grants the pending Motion for Reconsideration.²⁴ Judge Lodge's decision is not final.

10. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., pp. 6-7. Plaintiff disputes that her "termination was because Mayor Briscoe determined he could not work with her and would rather vet and hire his own City Administrator," as claimed by Defendant.²⁵ Plaintiff incorporates by reference paragraph 2, above, herein.

11. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 7. Plaintiff disputes that ongoing Sun Valley matters under investigation "were not ... the cause of Hammer's termination," as claimed by Defendant.²⁶ Plaintiff incorporates by reference paragraph 2, above, herein.

12. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 7. Plaintiff disputes that after the November 11, 2011 executive session that Mayor Willich or Adam King "presented the allegations that had been made against her," as claimed by

²² *Hammer, et al. v. Sun Valley, et al.*, DNs 44, 44-1, 51, 57.

²³ *Hammer, et al. v. Sun Valley, et al.*, DNs 45, 45-1 – 45-4, 52, 58.

²⁴ *Hammer, et al. v. Sun Valley, et al.*, DNs 48 – 48-44, 50, 53.

²⁵ Pltf's MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

²⁶ Pltf's MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

Defendant.²⁷ At the time her resignation was demanded, Ms. Hammer was told only that undefined allegations of misconduct had been lodged against her.²⁸

13. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 8. Plaintiff disputes that the November 18, 2011 involuntary leave was "non-disciplinary," as claimed by Defendant.²⁹ Shortly after forcing Ms. Hammer to go on leave, Sun Valley allowed the Idaho Mountain Express newspaper to report that: **"An internal investigation of Sun Valley City Administrator Sharon Hammer's 'possible misuse of public funds and equipment' was the cause of her being placed on administrative leave two weeks ago."**³⁰ Nils Ribi, as a Sun Valley City Councilman submitted sworn testimony that: **"[T]he Mayor and Council had reason to believe that the [Ms. Hammer] may have committed serious misconduct, including possible criminal violations of statutes dealing with the misuse of public funds and falsification of public records."**³¹ These, and other, public statements by Sun Valley show that Ms. Hammer's involuntary leave was **not** non-disciplinary.

14. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 10. Plaintiff disputes that she was terminated "because Mayor Briscoe determined he could not work with her and would rather vet and hire his own city administrator," as claimed by Defendant.³² Plaintiff incorporates by reference paragraph 2, above, herein.

15. Plaintiff disputes certain alleged facts contained at Def's. Corrected MSJ Mem., p. 11. Plaintiff disputes that in the present suit she "has attempted to confuse these events and

²⁷ Pltf's MSJ Stmt of Facts, ¶¶ 8-9, 25; Pltf's MSJ Aff. of Hammer, ¶ 14.

²⁸ Pltf's MSJ Aff. of Hammer, ¶ 14.

²⁹ Pltf's MSJ Stmt of Facts, ¶¶ 11, 13-14.

³⁰ Pltf's MSJ Stmt of Facts, ¶ 13 (emphasis added).

³¹ Pltf's MSJ Stmt of Facts, ¶ 13 (emphasis added).

³² Pltf's MSJ Stmt of Facts, ¶¶ 4, 6-10, 12-17, 21-29.

conflate them in such a way as to show that Ribi somehow orchestrated a scheme to have her fired in retaliation for reporting his alleged harassment,” as argued by Defendant.³³ This unsupported argument does not assert or prove any issue of material fact. Regardless, Ms. Hammer disputes the argument, as presented herein and in her Memorandum in Support of Plaintiff’s Motion for Summary Judgment, filed November 18, 2014.

16. Plaintiff disputes certain alleged facts contained at Def’s. Corrected MSJ Mem., p. 11. Plaintiff disputes that “she waived and then released this claim and, in any event, there is insufficient evidence to support her claim,” as argued by Defendant.³⁴ Plaintiff incorporates by reference paragraph 4, above, herein.

III. STANDARD OF REVIEW

Summary judgment is appropriate only “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). In making the determination, disputed facts within the record are to be construed in the light most favorable to the party opposing the motion, drawing all reasonable inferences in that party’s favor. *Castorena v. General Elec.*, 149 Idaho 609, 613, 238 P.3d 209, 213 (2010) (citation omitted). “The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and [the] Court must evaluate each party’s motion on its own merits.” *Ciszek v. Kootenai County Bd. of Comm’rs*, 151 Idaho 123, 128, 254 P.3d 24, 28-29 (2011) (quoting *Borley v. Smith*, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010)). “When both parties file simultaneous cross-motions for summary judgment, the Court still bears the

³³ Plt’f’s MSJ Stmt of Facts.

³⁴ Plt’f’s MSJ Stmt of Facts, ¶¶ 30-37; Plt’f’s MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22; Plt’f’s MSJ Aff. of Willich, ¶¶ 2-3, 5-10; Plt’f’s MSJ Aff. of Donoval, ¶¶ 4-9 and Exs. 1-3.

responsibility for determining whether disputed issues of material fact are present, and must evaluate all of the evidence submitted.” *Al-Kidd v. Gonzales*, 2008 U.S. Dist. LEXIS 106989 at ** 22-23, 2008 WL 553777 at *7 (D. Idaho Feb. 13, 2008) (citing *Fair Hous. Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001)).

IV. ARGUMENT

A. **Ms. Hammer Did Not Waive or Release Any Rights or Remedies Arising from Sun Valley’s Violations of the IPPEA**

1. The public policy underlying the IPPEA prohibits the waiver and release claimed by Sun Valley.

The public policy of the IPPEA is an express exclusion to the general contract analysis relied upon by Sun Valley to excuse itself of liability arising from its violations of the IPPEA. (Def’s. Corrected MSJ Mem., § IV.A.) The State of Idaho has seen fit to protect government employees and define the legality of a government employer’s response when informed of allegations of misconduct by one employee against another. The statute’s declared intent is that:

The legislature hereby finds, determines and declares that government constitutes a large proportion of the Idaho work force and that it is beneficial to the citizens of this state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.

I.C. § 6-2101. This statement of intent is Idaho’s declaration of public policy with respect to the protection of “whistleblower” employees. “Public policy may be found and set forth in the statutes, judicial decisions or the constitution.” *Jesse v. Lindsley*, 146 Idaho 70, 75, 233 P.3d 1, 6 (2008) (quotation omitted). Sun Valley cannot relieve itself of liability arising from its, or its employee’s, violations of the IPPEA by conditioning payment of Ms. Hammer’s severance payment on her assent to a contractual exculpatory clause. Any such alleged waiver or release

would be void as against the public policy of this State. “Whether a contract violates public policy is a question of law for the court to determine from all the facts and circumstances of each case.” *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citation omitted).

Sun Valley is prohibited from contracting its way out of liability arising from violations of the IPPEA because such liability has been prescribed to it by Idaho’s legislature. “[W]e do hold that where the legislature has addressed the rights and duties pertaining to personal injuries arising out of the relationship between two groups, *i.e.*, employers/employees ..., and has granted limited liability to one group in exchange for adherence to specific duties, then such duties become a ‘public duty’ within the exception to the general rule validating exculpatory contracts.” *Lee v. Sun Valley Co.*, 107 Idaho 976, 979, 695 P.2d 361, 364 (1984) (emphasis added). Under the IPPEA, government employers are subject to liability for enumerated relief when the jury finds that the employer took an adverse action against the employee because the employee engaged in protected activity. I.C. §§ 6-2104, 6-2106.

Prior to *Lee*, “the general rule ... that ‘express agreements exempting one of the parties [from liability] are to be sustained’ is subject to exceptions where: ‘(1) one party is at an obvious disadvantage in bargaining power; (2) a public duty is involved (public utility companies, common carriers).’” 107 Idaho at 978, 695 P.2d at 363 (quoting *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499-500, 465 P.2d 107, 110-11 (1970)). “However, it [was] nevertheless well established that courts look with disfavor on such attempts to avoid liability and construe such provisions strictly against the person relying on them, especially when that person is the preparer of the document.” *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178, 595 P.2d 709, 712 (1979) (citations omitted).

The Court in *Lee* clarified the public duty exemption and affirmed that, in Idaho,

“[certain] statutory rights and duties may not be waived or exempted by contract.” 107 Idaho at 979, 695 P.2d at 364 (citations omitted). And, “[e]ven though no express provisions be contained in the ... statute, it would seem that any attempt to nullify or limit the operation of law must be held to be invalid as being against public policy.” *Id.* (quoting 81 Am.Jur.2d Workmen’s Comp. § 51, p. 741 (1976)). The IPPEA falls within the class of statutory rights and duties that cannot be waived or released by contract because it pertains to injuries arising out of the relationship between government employers and their employees – a pairing specifically identified in *Lee*’s holding. *Id.*

Beginning in October 2009, Ms. Hammer made numerous complaints to Mayor Willich and City Attorney King regarding Councilman Ribí’s acts of harassment, hostility and misconduct against her.³⁵ Mr. Ribí’s harassing conduct violated Section 7.5 of the City of Sun Valley Personnel Policies & Procedures Manual.³⁶ **The Policies & Procedures Manual had been repeatedly adopted by resolutions of the Mayor and City Council, causing it to be a “permanent record” of the City of Sun Valley.**³⁷ I.C. § 50-907(1); *see also* I.C. § 50-902 (establishing process for passage of resolutions). Ms. Hammer’s acts of reporting Mr. Ribí’s violative conduct, and her subsequent, related IHRC and court filings were all protected activities under the IPPEA.³⁸ I.C. § 6-2104. Prior to her termination, Sun Valley made public statements about Ms. Hammer being placed on administrative leave, and that she was being investigated for criminal misconduct.³⁹

On January 19, 2012, Mayor Briscoe, with the majority vote of the Sun Valley City

³⁵ Plt’f’s MSJ Stmt of Facts, ¶ 4.

³⁶ Plt’f’s MSJ Aff. of Counsel, Ex. 3, § 7.5.

³⁷ Plt’f’s MSJ Aff. of Counsel, Ex. 3, cover page.

³⁸ Plt’f’s MSJ Stmt of Facts, ¶¶ 4, 12, 15-17, 20.

³⁹ Plt’f’s MSJ Stmt of Facts, ¶¶ 13-14, 21-29.

Council, terminated Ms. Hammer from her position as City Administrator.⁴⁰ Sun Valley **purportedly** terminated Ms. Hammer “without cause.”⁴¹ Pursuant to Section 3 of her Employment Agreement, termination without cause required the City to make a severance payment to Ms. Hammer, under the following terms:

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee’s employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee’s **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual (“Personnel Manual”).⁴²

The Employment Agreement did not describe or specify what the anticipated release should say or the causes of action the release was anticipated to cover.⁴³

Following a series of conversations between Mr. Donoval, as Ms. Hammer’s attorney, and Sun Valley’s attorney, Mr. Naylor, Ms. Hammer provided Sun Valley with the Supplemental Release on January 23, 2012.⁴⁴ At no time did Mr. Naylor or Sun Valley ever demand language

⁴⁰ Pltf’s MSJ Stmt of Facts, ¶ 28.

⁴¹ Pltf’s MSJ Stmt of Facts, ¶¶ 28-30.

⁴² Pltf’s MSJ Aff. of Hammer, Ex. 1, § 3.A (emphasis original).

⁴³ Pltf’s MSJ Aff. of Hammer, Ex. 1, § 3.A.

⁴⁴ Pltf’s MSJ Stmt of Facts, ¶¶ 31-32.

releasing Ms. Hammer's claims under the IPPEA. Leading up to the Supplemental Release, Mr. Donoval repeatedly advised Sun Valley that Ms. Hammer would not waive or release any claim other than those arising from the severance package (*i.e.*, she would only waive contract and wage claims).⁴⁵ The intent of Ms. Hammer's release extended only to claims arising out of a dispute related to the severance package.⁴⁶ In line with Ms. Hammer's position regarding the scope of Section 3.A. of the Employment Agreement, the Supplemental Release succinctly stated:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.⁴⁷

Ms. Hammer was subsequently paid all amounts of severance due to her under the contract.⁴⁸

In June 2008, when the Employment Agreement was entered into by Ms. Hammer and Sun Valley, Mayor Willich was authorized, and had the supporting unanimous vote of the City Council, to hire Ms. Hammer.⁴⁹ At the time the Employment Agreement was entered, there was no intent by either party that Ms. Hammer was or would waive or release any statutory right or protection under the IPPEA.⁵⁰ And, when Ms. Hammer signed the Supplemental Release, she had absolutely no intent to release any statutory rights or waive any of the claims alleged in the present case.⁵¹

⁴⁵ Pltf's MSJ Stmt of Facts, ¶ 32.

⁴⁶ Pltf's MSJ Stmt of Facts, ¶¶ 31-37.

⁴⁷ Pltf's MSJ Aff. of Hammer, Ex. 2.

⁴⁸ Pltf's MSJ Stmt of Facts, ¶ 34.

⁴⁹ Pltf's MSJ Stmt of Facts, ¶¶ 35-37.

⁵⁰ Pltf's MSJ Stmt of Facts, ¶ 36.

⁵¹ Pltf's MSJ Stmt of Facts, ¶ 37.

Even if Sun Valley's extension of Section 3.A. of the Employment Agreement, to relieve it of liability imposed by the IPPEA, did not violate public policy, it would still fail. **"Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue."** *Jesse*, 146 Idaho at 75, 233 P.3d at 6 (citing *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178, 595 P.2d 709, 712 (1979)) (emphasis added). The language absolving Sun Valley of liability in Section 3 of the Employment Agreement "for any and all claims for damages of any kind arising from a termination without cause" is ambiguous and simply too broad.⁵² See *Jesse*, 146 Idaho at 76-77, 233 P.3d at 7-8 (finding exculpatory clause in lease too broad to enforce). Neither the Supplemental Release nor the Employment Agreement cites to, acknowledges, or even infers waiver and release of her statutory rights under the IPPEA or Sun Valley's liability for violations thereof.⁵³ No language within either document purported to waive or release the right to sue conferred upon Ms. Hammer by the IPPEA.⁵⁴ I.C. § 6-2105. Even if she could, Ms. Hammer did not waive or release any claims or relief under the IPPEA.⁵⁵

The Employment Agreement and Ms. Hammer's Supplemental Release cannot absolve Sun Valley of a possible violation of the IPPEA. *Lee*, 107 Idaho 979-80, 695 P.2d 364-65. "It is a well-settled general doctrine that the law will not sustain a covenant of immunity which protects against fraud or relieves one of a duty imposed by law for the public benefit." *Lee*, 107 Idaho at 982, 695 P.2d at 367 (Bistline, J., dissenting) (quoting 17 Am.Jur.2d Contracts § 188, p. 557) (emphasis added in *Lee*). The Court should find as a matter of law that Ms. Hammer did

⁵² Pltff's MSJ Aff. of Hammer, Ex. 1, § 3.A.

⁵³ Pltff's MSJ Aff. of Hammer, Exs. 1 and 2.

⁵⁴ Pltff's MSJ Aff. of Hammer, Exs. 1 and 2.

⁵⁵ Pltff's MSJ Stmt of Facts, ¶¶ 32-37.

not and could not waive or release any right or protection provided under the IPPEA, and dismiss Sun Valley's Fifth and Sixth Affirmative Defenses.

2. Inherent in Idaho law is a presumption against the waiver or release of statutory rights.

Idaho law restricts the waiver or release of a known right.⁵⁶ **"Waiver is a voluntary, intentional relinquishment of a known right or advantage."** *Brand S. Corp. v. King*, 102 Idaho 731, 724, 639 P.2d 429, 432 (1981) (citations omitted) (emphasis added). Nothing in the record before the Court establishes that Ms. Hammer voluntarily and intentionally relinquished her rights under the IPPEA. To the contrary, the record is replete with evidence that such a waiver and release were not contemplated or intended under either the Employment Agreement or the Supplemental Release.⁵⁷

No terms of the Employment Agreement or the Supplemental Release "speak clearly and directly" to exclude Sun Valley's liability under the IPPEA. *Jesse*, 146 Idaho at 75, 233 P.3d at 6. And, when the language of the Supplemental Release was being negotiated by Ms. Hammer and Sun Valley, Sun Valley did not request or require the Supplemental Release include specific language regarding Ms. Hammer's rights under the IPPEA.⁵⁸ "The primary aim in interpretation of all contracts is to ascertain the mutual intent of the parties at the time the contract was made."

⁵⁶ The Idaho Supreme Court has repeatedly affirmed that constitutional rights may be waived, so long as the prospective plaintiff (often times a criminal defendant) does so knowingly, voluntarily and intelligently. See, *Smith v. State*, 146 Idaho 822, 834-35 n.11 (2012); *Lubcke v. Boise City/Ada County Hous. Auth.*, 124 Idaho 450, 460 (1993). **"However, the waiver of any fundamental constitutional right is never presumed."** *Glangary-Gamlin Protective Ass'n v. Bird*, 106 Idaho 84, 90, 675 P.2d 344, 350 (Ct. App. 1983) (citation omitted). **"[T]he waiver must be affirmatively demonstrated."** *Bird*, 106 Idaho at 90, 675 P.2d at 350. "As a corollary to this definition of waiver, this Court has repeatedly stated that there is a **presumption against waiver** of fundamental constitutional rights." *Id.* (emphasis added) (citations omitted). *Smith v. State*, 146 Idaho 822, 834-35 n.11 (2012) (citations omitted).

⁵⁷ Pltf's Stmt of Disputed Facts, ¶¶ 3-5, 7, 16.

⁵⁸ Pltf's Stmt of Disputed Facts, ¶¶ 3-5, 7, 16; Pltf's MSJ Aff. of Donoval, Exs. 1-3.

Opportunity, LLC v. Ossewarde, 1636 Idaho 602, 607, 38 P.3d 1258, 1263 (2002) (citation omitted). “If possible, the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent.” *Opportunity, LLC*, 1636 Idaho at 607, 38 P.3d at 1263 (citation omitted). And, “when a subsequently executed agreement specifically references and relies on a former agreement, the two are to be interpreted together, if possible.” *Opportunity, LLC*, 1636 Idaho at 607, 38 P.3d at 1263 (citing *Silver Syndicate, Inc. v. Sunshine Mining Co.*, 101 Idaho 226, 235, 611 P.2d 1011, 1020 (1979)).

The Supplemental Release purposefully refers back to the intent of Ms. Hammer and Mayor Willich when they signed the Employment Agreement in June 2008:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement **as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.**⁵⁹

The evidence of record shows that Mayor Willich and Ms. Hammer did not intend the Employment Agreement to “waive any statutory rights or future discrimination, harassment, retaliation or other non-contract claims if the City of Sun Valley shoes to ever terminate the Employment Agreement pursuant to the ‘without cause’ provisions of Section 3, Paragraph A.”⁶⁰

The Supplemental Release expressly incorporates the Employment Agreement **and** expressly incorporates the intent of Sun Valley and Ms. Hammer when the Employment Agreement was executed.⁶¹ To ascertain the intent of the parties in June 2008, the only admissible evidence available to the Court is the testimony of Mayor Willich and Ms. Hammer, and the terms of the

⁵⁹ Pltf’s MSJ Aff. of Hammer, Ex. 2 (emphasis added).

⁶⁰ Pltf’s MSJ Aff. of Willich, ¶ 7; Pltf’s Stmt of Disputed Facts, ¶¶ 3-5, 7, 16.

⁶¹ Pltf’s MSJ Aff. of Hammer, Ex. 2.

Employment Agreement.⁶² The Court should consider the Employment Agreement in light of Ms. Hammer and Mayor Willich's testimony regarding their intent about the same.⁶³ In doing so, the only outcome can be that no intent to waive or release Ms. Hammer's rights under the IPPEA has ever existed.

Further, following Sun Valley's termination of Ms. Hammer it expressly recognized that she may have claims and damages arising under the IPPEA.⁶⁴ Sun Valley mutually recited and agreed that: **"As a result of all incidents identified in [the 2011 IPPEA Case and her three Notices of Tort Claim], and all subsequent and ongoing incidents regarding or relating to Ms. Hammer's employment with the City of Sun Valley, she claims to have been injured by the Prospective Defendants' alleged violations of her common law, state and federal rights."**⁶⁵ And, Sun Valley agreed to toll all applicable statutes of limitation in order for the parties to explore both settlement and Ms. Hammer's actionable claims and damages.⁶⁶ In the absence of settlement, this case ensued.⁶⁷ Now, over two years after Sun Valley acknowledged Ms. Hammer's claims under the IPPEA, it asks the Court to deny her statutory rights and protections promulgated by this State's legislature.

Sun Valley's Motion for Summary Judgment must be denied because Ms. Hammer never voluntarily and knowingly waived or released her rights under the IPPEA.

⁶² Pltf's MSJ Aff. of Willich, ¶¶ 2-9; Pltf's MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22 and Ex. 1.

⁶³ Pltf's MSJ Aff. of Willich, ¶¶ 2-9; Pltf's MSJ Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22, Exs. 1 and 2; Pltf's MSJ Aff. of Donoval, ¶¶ 4-9.

⁶⁴ Pltf's Resp. Aff. of Counsel, Ex. 3.

⁶⁵ Pltf's Resp. Aff. of Counsel, Ex. 3.

⁶⁶ Pltf's Resp. Aff. of Counsel, Exs. 3-4.

⁶⁷ Pltf's Resp. Aff. of Counsel, Ex. 3.

3. No consideration was paid by Sun Valley for Ms. Hammer's alleged waiver or release of her IPPEA claims.

The alleged release of non-contract claims was both unintended and lacked consideration, and therefore the release could not have been formed.⁶⁸ In Idaho, “[e]very contract must have these four elements ... : 1. Competent parties; 2. A lawful purpose; 3. Valid consideration; and 4. Mutual agreement by all parties to all essential terms.” IDJI 6.01.1. The severance payment that Ms. Hammer received was not consideration for waiver or release of her IPPEA rights. The severance payment was wages, and was treated as such by Sun Valley and Ms. Hammer. The Employment Agreement makes clear that what Ms. Hammer was receiving as consideration upon termination without cause was a **severance benefit**, not consideration for a release of statutory protections:

Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement.⁶⁹

Under Idaho law, severance pay is wages; it is a component of compensation in an employment agreement. *Sarbacher v. AmeriCold Realty Trust*, Case No. 1:10-cv-429-BLW, 2011 U.S. Dist. LEXIS 131290, *20-24 (D. Idaho, Nov. 14, 2011). Similarly, the United States Supreme Court recently explained:

[S]everance payments made to terminated employees are ‘remuneration for employment.’ Severance payments are, of course, ‘remuneration,’ and common sense dictates that employees

⁶⁸ Pltf's Stmt of Disputed Facts, ¶¶ 3-5, 7, 16.

⁶⁹ Pltf's MSJ Aff. of Hammer, Ex. 1 (emphasis original).

receive the payments 'for employment.' ... Severance payments are made in consideration for employment – for a 'service ... performed' by 'an employee for the person employing him'

United States v. Quality Stores, Inc., 134 S. Ct. 1395, 1399-1400 (2014) (quoting 26 U.S.C. § 3121(b)). If Sun Valley intended the termination without cause provision to also give rise to a release of IPPEA rights and protections, it needed to pay consideration beyond the severance (*i.e.* wages) for that additional release. *Groves v. Firebird Raceway*, Case No. 94-3554, 1995 U.S. App. LEXIS 28191 (9th Cir. Sept. 28, 1995) (citing *Lomas & Nettleton Co. v. Tiger Enters., Inc.*, 99 Idaho 539, 585 P.2d 949, 952 (1978) (a release is a type of contract)); *Vance v. Connell*, 96 Idaho 417, 529 P.2d 1289, 1291 (1974) (some consideration is a necessary element to all contracts); *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 562 (Minn. 1995) ("as with any other contract, a release requires consideration"); *Brown v. Kentucky Lottery Corp.*, 891 S.W.2d 90, 92 (Ky. Ct. App. 1995) ("it is well established that a release must be supported by valuable consideration.").

Ms. Hammer's situation is analogous to the *Sarbacher v. AmeriCold Realty Trust*. In *Sarbacher*, the employee and employer entered into an employment agreement providing for a severance payment in the event the employee was terminated without cause. 2011 U.S. Dist. LEXIS 131290, *5. After being terminated, the employee sued for his wages. The employer disputed that severance pay was a wage and instead argued that the severance payment was liquidated damages. *Sarbacher*, 2011 U.S. Dist. LEXIS 131290, *17-24. Judge Winmill held that "severance pay is an item of bargained-for compensation in exchange for services rendered" and is thus "a wage under prevailing Idaho authority." *Sarbacher*, 2011 U.S. Dist. LEXIS 131290, *24. And, a "plaintiff is not required to return or offer to return consideration received pursuant to a valid release agreement as a prerequisite to initiating a [] action premised on

violations only purportedly released by the agreement.” *Botefur v. City of Eagle Point*, 7 F.3d 152, 156 (9th Cir. 1993).

In both *Johnson v. Allied Stores Corp.* and *Sarbacher*, the terminated employee was supposed to receive (*Johnson*), or actually received (*Sarbacher*), a lump sum payment at the time of termination. *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (1984); *Sarbacher*, 2011 U.S. Dist. LEXIS 131290. In both cases the ruling court found that the lump sum severance payments were considered wages for past performance. Neither court held the severance payments to be liquidated damages for other claims. Both courts held that “a claim for severance pay is [] a component of the compensation in an employment agreement. Severance pay is not a mere gratuity.” *Johnson*, 106 Idaho at 367, 679 P.2d at 644; *Sarbacher*, 2011 U.S. Dist. LEXIS 131290, *19. Here, no consideration was paid for the alleged release of IPPEA claims.⁷⁰ No consideration was paid for a release of claims beyond the non-contract claims arising out of a termination without cause because such a release was never intended.⁷¹

Judgment as a matter of law that Ms. Hammer voluntarily released her IPPEA claims cannot be entered because no consideration was paid by Sun Valley for such a release. Sun Valley’s Motion for Summary Judgment should be denied.

4. The federal court’s decision in Ms. Hammer’s parallel civil rights case is not final or binding on this Court.

An action arising from the same facts and circumstances as this case is currently pending before the United States District Court for the District of Idaho.⁷² However, the federal case involves only federal causes of action arising from the federal defendants’ violations of Ms.

⁷⁰ Plt’s MSJ Aff. of Hammer, Ex. 1.

⁷¹ Plt’s Stmt of Disputed Facts, ¶¶ 3-5, 7, 16.

⁷² *Hammer, et al. v. Sun Valley, et al.*

Hammer's federally guaranteed civil rights and state common law claims.⁷³ The federal case is not another action pending between the same parties for the same cause of action. *See* I.R.C.P. 12(b)(8). The federal court has never had before it a claim of waiver of rights under the IPPEA.⁷⁴ And, unlike this Court, the federal court was not bound by the Idaho Supreme Court's decision in *Lee v. Sun Valley Co.*, prohibiting contractual relief from liability that undermines the declared intent of an Idaho statute. 107 Idaho 976, 695 P.2d 361 (1984).

The federal MEMORANDUM DECISION AND ORDER relied on by Sun Valley to bolster this Court's confidence in finding a waiver or release of Ms. Hammer's rights under the IPPEA is neither final nor binding on this Court.⁷⁵ (Def's. Corrected MSJ Mem., § IV.A.3. p. 16.) The federal court's Decision resulted from Sun Valley's motion for judgment on the pleadings pursuant to Fed. R. Civ. Pro. 12(c).⁷⁶ It was not a motion for summary judgment that allowed Ms. Hammer to submit evidence.⁷⁷ In response to the federal court's issuance of the referenced Decision, Ms. Hammer timely filed PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S MEMORANDUM DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS that is still pending.⁷⁸ Ms. Hammer also filed PLAINTIFFS' RENEWED MOTION TO AMEND THE SCHEDULING ORDER AND MOTION FOR LEAVE TO AMEND THE COMPLAINT, which is still pending in the federal court.⁷⁹ And, Ms. Hammer filed PLAINTIFF SHARON HAMMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT regarding certain federal causes of action and state common law claims that the

⁷³ *Hammer, et al. v. Sun Valley, et al.*, DN 1, Complaint and Demand for Jury Trial.

⁷⁴ *Hammer, et al. v. Sun Valley, et al.*, DN 1, Complaint and Demand for Jury Trial.

⁷⁵ *Hammer, et al. v. Sun Valley, et al.*, DNs 41, 44, 44-1, 45, 45-1.

⁷⁶ *Hammer, et al. v. Sun Valley, et al.*, DNs 18, 41.

⁷⁷ *Hammer, et al. v. Sun Valley, et al.*, DNs 41, 22 (Judge Lodge refused to convert the 12(c) motion to a Rule 56 motion).

⁷⁸ *Hammer, et al. v. Sun Valley, et al.*, DNs 44, 44-1, 51, 57.

⁷⁹ *Hammer, et al. v. Sun Valley, et al.*, DNs 45, 45-1 – 45-4, 52, 58.

federal court erroneously dismissed and/or that are expected to be revived when the federal court grants the pending Motion for Reconsideration.⁸⁰ The federal Decision has no bearing on this Court's denial of Sun Valley's Motion for Summary Judgment.

B. Ms. Hammer Has Presented a Prima Facie Case of Sun Valley's Violations of the IPPEA

1. Ms. Hammer repeatedly reported violations or suspected violations of official Sun Valley rules and regulations.

Government employees in Idaho are provided with heightened protections against termination or other adverse employment actions when the employee communicates "a violation or suspected violation of a law, rule or regulation adopted under ... a political subdivision of this state" I.C. § 6-2104(1). Sun Valley incorrectly asserts that its Personnel Policies & Procedures Manual is not an official rule or regulation of the City of Sun Valley. (Def's. Corrected MSJ Mem., § IV.B.3.) Idaho Code § 50-902 codifies the process by which city councils pass or adopt official ordinances and resolutions. Once an ordinance or resolution is adopted by a city council it "shall be read and received in evidence in all courts and places without further proof." I.C. § 50-902. Further, Idaho Code § 50-907(1) defines "permanent records" of a municipal corporation as including "ordinances and resolutions." I.C. § 50-907(1)(b). The City of Sun Valley Personnel Policies & Procedures Manual expressly identifies the numerous Resolution Numbers by which the Mayor and City Council have perpetually and repeatedly adopted the Manual as a permanent record – a rule or regulation – of Sun Valley.⁸¹

Sun Valley's reliance on *Mallonee v. Idaho Dept. of Correction*, 139 Idaho 615, 84 P.3d 551 (2004), to support its argument that its Personnel Policies & Procedures Manual is not a rule

⁸⁰ *Hammer, et al. v. Sun Valley, et al.*, DNS 48 – 48-44, 50, 53.

⁸¹ Plt's MSJ Aff. of Counsel, Ex. 3, cover page.

or regulation that can be violated under the IPPEA is misplaced. (Def's. Corrected MSJ Mem., § IV.B.3.) The Defendant in *Mallonee* was the Idaho Department of Correction ("DOC"), a public administrative body, not the state or a political subdivision of the state – like Sun Valley is.⁸² Because the DOC was just an administrative body the extent of its authority to promulgate interdepartmental policies and procedures that could equate to a law of the state, namely pursuant to the Idaho Administrative Procedures Act, was limited. *Id.*, 139 Idaho at 620, 84 P.3d at 556. The *Mallonee* Court found that because the DOC policies could not be promulgated as a law, rule or regulation of the state, the plaintiff's complaints about violations of DOC policies was not a protected act under the IPPEA. 139 Idaho at 620, 84 P.3d at 556. *Mallonee* is inapplicable here because the City of Sun Valley is a political subdivision of the state of Idaho,⁸³ and reprisal against an employee for communicating violations of any of Sun Valley's rules or regulations adopted by resolution is a protected activity under the IPPEA. I.C. §§ 6-2101, *et seq.*, 50-902 and 50-907(a).

Here, the Policies & Procedures Manual had been repeatedly adopted by resolutions of the Mayor and Sun Valley City Council.⁸⁴ I.C. § 50-907(1); *see also* I.C. § 50-902 (establishing process for passage of resolutions). Ms. Hammer's complaints about Councilman Ribi's violations of the harassment policy contained within the Policies & Procedures Manual were protected acts under the IPPEA. The Court should find as a matter of law that Ms. Hammer

⁸² AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL ("Amended Complaint"), ¶ 2; DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL ("Answer"), ¶ 3.

⁸³ Amended Complaint, ¶ 2; Answer ¶ 3.

⁸⁴ Plt's MSJ Aff. of Counsel, Ex. 3, cover page.

engaged in protected activities when she lodged such complaints with Mayor Willich and City Attorney Adam King.⁸⁵

2. Sun Valley's termination of Ms. Hammer, purportedly "without cause," was pretext for its retaliation in violation of the IPPEA.

Sun Valley's purported reasons for terminating Ms. Hammer cannot be taken as true on summary judgment, nor is Ms. Hammer required to show anything more than a rational inference of retaliatory discharge in violation under the IPPEA. The Idaho Supreme Court has held that "the *McDonnell Douglas* analysis should be applied to actions arising under Idaho's whistleblower act." *Curlee v. Kootenai county Fire & Rescue*, 148 Idaho 391, 396, 224 P.3d 458, 463 (2008).

When the *McDonnell Douglas* analysis is applied to cases involving retaliatory discharge under a whistleblower statute, the test is as follows: (1) the plaintiff must establish a prima facie case of retaliatory conduct for an action protected by the relevant whistleblower statute; (2) once the plaintiff demonstrates a prima facie case, the defendant is obligated to produce evidence which, if taken as true, would permit the conclusion that there was a non-retaliatory reason for the adverse action; and (3) if the defendant articulates a legitimate non-retaliatory reason for discharge, then the burden shifts to the plaintiff to prove by a preponderance of the evidence that the reason the defendant offers is a pretext for retaliatory conduct.

Curlee, 148 Idaho at 396, 224 P.3d at 463 (citation omitted). **However, "the burden-shifting rule of *McDonnell Douglas* ... has little or no application at the summary judgment stage. The rule explicitly governs the burden of persuasion at trial." *Id.* (quotations omitted) (emphasis added).** It would be error for the district court to apply the burden-shifting proof requirements at the summary judgment stage. *Id.* "[I]n order to survive summary judgment, [an IPPEA plaintiff] only [has] the burden of presenting evidence from which a rational inference of

⁸⁵ Pltf's MSJ Stmt of Facts, ¶ 4.

retaliatory discharge under the whistleblower act could be drawn.” *Id.* “If [the IPPEA plaintiff] present[s] a prima facie case of retaliatory discharge, **the district court [is] not free to accept as true the employer’s testimony that she was fired from some other legitimate reason.**” *Id.* (emphasis added); *see also Van v. Portneuf Medical Center*, 147 Idaho 552, 559-60, 212 P.3d 982, 989-90 (2009) (“*Van I*”) (holding district court erred by simply accepting employer’s proffered reasons for firing IPPEA plaintiff).

Regardless of the very limited application of *McDonnell Douglas* analysis to Sun Valley’s motion for summary judgment, ample evidence exists that Ms. Hammer’s termination was not “without cause” and that the stated reasons are mere pretext. “A plaintiff may establish pretext ‘either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy or credence.’” *Frogley v. Meridian Joint Sch. Dist. No. 2*, 155 Idaho 558, 564, 314 P.3d 613, 619 (2013) (quoting *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981)). “Direct evidence of discriminatory animus has been recognized by several circuits as ‘evidence which, if believed, proves the fact without inference or presumption.’” *Frogley*, 155 Idaho at 564, 314 P.3d at 619 (quoting *Davis v. Chevron U.S.A., Inc.*, 14 F.3d 1082, 1085 (5th Cir. 1994)) (additional citations omitted). “Recognizing that direct evidence is rare, the plaintiff ‘may come forward with circumstantial evidence that tends to show that the employer’s proffered motives were not their actual motives because they are inconsistent or otherwise not believable.’” *Frogley*, 155 Idaho at 622, 314 P.3d at 567 (quoting *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1222 (9th Cir. 1998)). “As a general rule, causation is an issue of fact for the jury and only rarely can the issue be determined on a motion for summary judgment.” *Van I*, 147 Idaho at 989, 212 P.3d at 559 (citation omitted).

Over the course of two years Ms. Hammer lodged multiple complaints regarding Mr. Ribí's violations of Sun Valley's anti-harassment policy; which Mr. Ribí had knowledge of.⁸⁶ Finally, on November 11, 2011, Mr. Ribí spearheaded a Special Meeting of the City Council regarding allegations of misconduct by Ms. Hammer asserted by the Sun Valley Treasurer and Sun Valley City Clerk.⁸⁷ Resulting from that meeting alone, Mr. Ribí, along with Councilmen DeWayne Briscoe and Robert Youngman, demanded that Ms. Hammer resign, and Mr. Ribí began asserting that criminal charges could be made against her.⁸⁸

By November 18, 2011, Ms. Hammer was placed on administrative leave by Mayor Willich.⁸⁹ Even though Mayor Willich told Ms. Hammer she was placed on leave to protect her from Mr. Ribí, Sun Valley reported to the local newspaper that she was placed on administrative leave pending investigation of her for improper use or misappropriation of City funds.⁹⁰ Beginning on November 21, 2011 through mid-January 2012, a series of legal and administrative proceedings ensued between Ms. Hammer, Sun Valley and various City officials arising from Sun Valley twice placing her on administrative leave without any honest specificity of its cause to do so, and from Mr. Ribí's continuing, now-public harassment of Ms. Hammer.⁹¹

Sun Valley repeatedly publicized confidential personnel matters regarding Ms. Hammer's employment with the City.⁹² On January 19, 2012, Sun Valley publically terminated Ms. Hammer's employment in a manner that violated the terms of her Employment Agreement, and then pursued a public smear campaign to destroy Ms. Hammer's personal and professional

⁸⁶ Pltí's MSJ Stmt of Facts, ¶ 4.

⁸⁷ Pltí's MSJ Stmt of Facts, ¶¶ 5-7.

⁸⁸ Pltí's MSJ Stmt of Facts, ¶¶ 8-9.

⁸⁹ Pltí's MSJ Stmt of Facts, ¶ 11.

⁹⁰ Pltí's MSJ Aff. of Counsel, Exs. 9-11; Pltí's MSJ Stmt of Facts, ¶¶ 10-11.

⁹¹ Pltí's MSJ Stmt of Facts, ¶¶ 12-27.

⁹² Pltí's MSJ Stmt of Facts, ¶¶ 13-14, 21-29.

reputations.⁹³ Following her termination, the Idaho Mountain Express reported that: “When asked whether Hammer’s termination was with or without cause, Naylor said, ‘There was no stated cause.’”⁹⁴ Given the totality of the circumstances surrounding Ms. Hammer’s termination, Sun Valley’s own attorney could not truthfully state she was fired “without cause.” Even Mr. Naylor’s quote that, “[t]here was no **stated** cause,” implies that some cause did exist, but Sun Valley would not, or could not, be publically forthright about that cause.

The factual circumstances and growing animosity against Ms. Hammer leading up to her involuntary leaves and termination evidence that Sun Valley’s actual motives for such adverse employment actions were retaliatory. Sun Valley’s argument that Ms. Hammer has not stated a *prima facie* case must be rejected. Sun Valley’s proffered reasons for her termination are pretextual, and its Motion must be denied.

3. Sun Valley took adverse actions against Ms. Hammer in violation of the IPPEA

Sun Valley admits that, at a minimum, it took an adverse action against Ms. Hammer when it terminated her employment. (Def’s. Corrected MSJ Mem., § IV.B.4.a.) Sun Valley undertook additional adverse actions against Ms. Hammer in violation of the IPPEA.⁹⁵ The IPPEA defines an “adverse action” against an employee to mean: “to **discharge, threaten or otherwise discriminate** against an employee in **any manner** that affects the employee’s employment, **including compensation, terms, conditions, location, rights, immunities, promotions or privileges.**” I.C. § 6-2103(1) (emphasis added). An employer is prohibited from engaging in actions that “could well dissuade a reasonable worker from making or supporting a

⁹³ Plt’s Resp. Aff. of Counsel, Ex. 1 ¶¶ 12-17; Plt’s Stmt of Disputed Facts, ¶¶ 2-3; Plt’s MSJ Stmt of Facts, ¶¶ 28-29.

⁹⁴ Plt’s Stmt of Disputed Facts, ¶ 3.

⁹⁵ Plt’s MSJ Stmt of Facts, ¶¶ 8-11, 13, 21-29; Plt’s Stmt of Disputed Facts, ¶¶ 2, 6, 10-14.

charge of [violation of law].” *Burlington N. & Santa Fe Ry. V. White*, 548 U.S. 53, 57 (2006). “[A] plaintiff must show that a reasonable employee would have found the challenged action materially adverse, ‘which in [the Title VII] context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.’” *White*, 548 U.S. at 68 (quotations omitted). “To constitute an adverse employment action, ‘a government act of retaliation need not be severe and it need not be of a certain kind. Nor does it matter whether an act of retaliation is in the form of the removal of a benefit or the imposition of a burden.’” *Ledford v. Idaho Dep’t of Juvenile Corr.*, Case No. 1:12-cv-00326-BLW, 2014 U.S. Dist. LEXIS 29911, at ** 12, 21-23 (D. Idaho Mar. 6, 2014) (quoting *Coszalter v. City of Salem*, 320 F.3d 968, 975 (9th Cir. 2003)). **“Indeed, a ‘campaign[] of harassment and humiliation’ could be deemed an adverse employment action even without the loss of any governmental benefit.”** *Ledford*, 2014 U.S. Dist LEXIS 29911, at ** 13, 21-23 (quoting *Coszalter*, 320 F.3d at 975)).

Here, the adverse actions taken by Sun Valley against Ms. Hammer include threats of termination if Ms. Hammer refused to resign; threats of criminal charges if Ms. Hammer refused to resign; biased investigations; Sun Valley’s publication of confidential personnel actions against Ms. Hammer, including two administrative leaves; Sun Valley’s publication of alleged wrongdoings by Ms. Hammer; termination; and a post-termination smear campaign by Sun Valley.⁹⁶ Each of these actions by Sun Valley were adverse to Ms. Hammer’s employment. Each of these actions were prohibited by the IPPEA. I.C. §§ 6-2103(1), 6-2104.

Ms. Hammer has both alleged and shown that Sun Valley engaged in prohibited acts that were adverse to her employment. Sun Valley admits that it engaged in adverse actions against

⁹⁶ Plt’f’s MSJ Stmt of Facts, ¶¶ 8-11, 13, 21-29; Plt’f’s Stmt of Disputed Facts, ¶¶ 2, 3, 12, 13.

Ms. Hammer. (Def's. Corrected MSJ Mem., § IV.B.4.a.) Sun Valley's argument that Ms. Hammer has not stated a *prima facie* case must be rejected and its Motion denied.

C. Ms. Hammer's Claims were Timely Filed because Each Was Expressly Protected by Tolling Agreements with Sun Valley

No part of Ms. Hammer's IPPEA case is barred by expiration of any statutory limitation. Idaho Code § 6-2105 requires that: "An employee who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) days **after the occurrence of the alleged violation of this chapter.**" I.C. § 6-2105(2) (emphasis added). Sun Valley and Ms. Hammer entered into a Tolling Agreement that expressly protected and extended her right to bring an action arising from wrongful, retaliatory acts of Sun Valley that occurred in November and December 2011.⁹⁷

Ms. Hammer claims to have suffered injuries beginning on or about November 11, 2011. Ms. Hammer has previously identified certain claims and damages in her initial Idaho Protection of Public Employees Act ("IPPEA") suit, filed November 21, 2011; and in her three previous Notices of Tort Claim, dated December 14, 2011, December 26, 2011, and December 30, 2011. Ms. Hammer believes that new and additional claims are available to her as a result of the Prospective Defendants' alleged additional and/or ongoing conduct. As a result of all incidents identified in the above-referenced matters, and all subsequent and ongoing incidents regarding or relating to Ms. Hammer's employment with the City of Sun Valley, she claims to have been injured by the Prospective Defendants' alleged violations of her common law, state and federal rights.

The parties to this Agreement acknowledge that the applicable statutes of limitation would require the Prospective Plaintiff to re-file and/or amend her IPPEA suit and/or serve another notice of tort claim upon the City of Sun Valley, to include and/or identify additional defendants, allegations and statements of injury, no later than May 9, 2012. However, the parties to this Agreement desire an opportunity to further discuss settlement of the matter prior to the IPPEA suit being re-filed and/or the additional notice of tort claim being served.

⁹⁷ Pltf's Resp. Aff. of Counsel, Ex. 3.

The original tolling period was from May 8, 2012 through May 30, 2012.⁹⁸ Sun Valley and Ms. Hammer later entered into the Extension of Tolling Agreement that incorporated by reference all recitals, terms and conditions of the Tolling Agreement, and only extended the tolling period through June 29, 2012.⁹⁹ Ms. Hammer's COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL was timely filed on June 29, 2012.

As recited in the Tolling Agreement, conservatively, the earliest that Ms. Hammer claims to have suffered injuries prohibited by the IPPEA was on or about November 11, 2011, when Sun Valley demanded her resignation without any explanation or evidence of wrongdoing.¹⁰⁰ Under the IPPEA, Ms. Hammer then had until May 9, 2012 to file a civil action. Alternatively, the first time that Ms. Hammer was placed on administrative leave on November 18, 2011 is more likely the first actionable occurrence under the IPPEA. One-hundred-eighty days from November 18, 2011 is May 16, 2012. Pursuant to the terms of the Tolling Agreement and the Extension of Tolling Agreement, Ms. Hammer's Complaint was timely filed.

Even under Sun Valley's argument, that its termination of Ms. Hammer on January 19, 2012 was its only retaliatory act prohibited by the IPPEA, the Complaint was timely filed. (Def's. Corrected MSJ Mem., § IV.B.4.a.) One-hundred-eighty days from January 19, 2012 is July 17, 2012. The Complaint was filed before that possible deadline. Now, instead of complying with its contractual obligations set forth in the Tolling Agreement and Extension of Tolling Agreement, Sun Valley presents a nonsensical argument that the Court should count backwards 180 days from the date the Complaint was filed and find any wrongful acts prior to that backwards analysis as being time-barred. This analysis is wrong. The IPPEA is forward-looking

⁹⁸ Pltf's Resp. Aff. of Counsel, Ex. 3 ¶ 1.

⁹⁹ Pltf's Resp. Aff. of Counsel, Ex. 4.

¹⁰⁰ Pltf's Resp. Aff. of Counsel, Ex. 3; *see also* Pltf's Stmt of Disputed Facts, ¶ 12.

and provides an IPPEA plaintiff with “one hundred eighty (180) days **after the occurrence of the alleged violation of this chapter**” to file an action. I.C. § 6-2105(2) (emphasis added). Sun Valley’s argument that the Court should count backwards is not based on the plain language of the statute.

The Court should deny as a matter of law Sun Valley’s claim that its acts of retaliation against Ms. Hammer, committed in November and December 2011, are time-barred.

D. Remedies Under the IPPEA Do Not Exclude Any Type of Lost Wages or Pain and Suffering

To date, the Idaho Supreme Court has expressly refused to render a decision on whether an IPPEA plaintiff may recover damages for pain and suffering and front pay. *Van v. Portneuf Med. Ctr.*, 156 Idaho 696, 330 P.3d 1054, 1065 (2014) (*Van II*). The Court must therefore look to the terms of the statute, which enumerates the following opportunities for relief to an IPPEA plaintiff:

A court, in rendering a judgment brought under [the IPPEA], may order any or all of the following:

- (1) An injunction to restrain continued violation of the provisions of this act;
- (2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position;
- (3) The reinstatement of full fringe benefits and seniority rights;
- (4) **The compensation for lost wages, benefits and other remuneration;**
- (5) The payment by the employer of reasonable costs and attorneys’ fees;
- (6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general fund.

I.C. § 6-2106 (emphasis added); *see also* I.C. 6-2105 (defining damages for injury or loss caused by violation of the IPPEA). Importantly, the Idaho Supreme Court has held that “front pay is a

permissible element of damages” under statutes that list “lost wages and benefits” as a type of damages that may be awarded to a plaintiff. *O’Dell v. Basabe*, 119 Idaho 796, 811, 810 P.2d 1082, 1097 (1991) (analyzing damages available under Idaho Code § 67-5908(3), Idaho Human Rights Act); *see also Smith v. Mitton*, 140 Idaho 893, 899-900, 104 P.3d 367, 373-74 (2004) **(upholding a jury instruction that enabled an award of future wages to an IPPEA plaintiff).**

Both back pay and front pay are subsets of the global term, ‘lost wages.’ This is illustrated by the fact that lost wages are to be awarded as an element of ‘actual damages,’ which are commonly understood as those actual losses caused by the conduct at issue. In other words, the purpose of the lost wages element of damages is to restore to the plaintiff all of the benefits lost as a result of the violation of the [statute]. There is no distinction drawn in the statute between actual damages suffered before the case reaches a courtroom from those arising after trial. ... Our conclusion on the issue of front pay is bolstered by policy considerations. If damages were measured by the interval between the wrongful conduct and the date of trial, plaintiff’s attorneys would have great incentive to procure trial delays in order to increase the amount of compensable damages. In addition, to cut off the measure of damages as of the date of trial would preclude full compensation to people injured by discriminatory practices. The alternative, to allow full compensation to injured plaintiffs for actual losses, is consistent with the terms of the statute and the policy ‘to make persons whole for injuries suffered on account of unlawful employment discrimination.’ *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

O’Dell, 119 Idaho at 811-12, 810 P.2d at 1097-98. “The amount of future lost wages or front pay to be awarded is a matter to be determined by the trier of fact upon review of the evidence in the record.” *O’Dell*, 119 Idaho , 812, 810 P.2d at 1098.

Ms. Hammer’s prayer for relief is not limited to damages, but also requests orders reinstating her job, her benefits and her seniority rights.¹⁰¹ Regardless of the scope of relief sought by Ms. Hammer, neither the IPPEA nor Idaho case law support Sun Valley’s position that

¹⁰¹ Amended Complaint, p. 33.

she cannot be awarded special or general damages. Ms. Hammer should be permitted to prove her damages in this matter. The Court should deny Sun Valley's request that Ms. Hammer's damages be limited as a matter of law.


V. CONCLUSION

For the foregoing reasons, Plaintiff Sharon R. Hammer respectfully requests that Sun Valley's Motion for Summary Judgment be denied in its entirety. Ms. Hammer also requests that her Motion for Summary Judgment be granted in its entirety.

DATED this 1st day of December, 2014.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

and on the 2nd day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

☐ U.S. Mail
☐ Fax: 383-9516
☒ Hand Delivery
☐ Email: kirt@naylorhales.com


ERIC B. SWARTZ
JOY M. VEGA

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
 1673 W. Shoreline Drive, Suite 200 [83702]
 P.O. Box 7808
 Boise, ID 83707-7808
 Telephone: (208) 489-8989
 Facsimile: (208) 489-8988
 Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

FILED A.M. _____
P.M. 2
DEC - 2 2014
Jolynn Dray, Clerk District
Court Blaine County, Idaho

SHARON R. HAMMER,

Case No. CV-2012-479

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

**AFFIDAVIT OF COUNSEL IN
SUPPORT OF PLAINTIFF'S
RESPONSE TO SUN VALLEY'S
MOTION FOR SUMMARY
JUDGMENT**

Defendants.

STATE OF IDAHO)
 : ss.
County of Ada)

I, JOY M. VEGA, being first duly sworn upon oath, depose and state as follows:

1. I am an attorney with the law firm of Jones & Swartz PLLC, and am authorized to practice law before this and all courts of the State of Idaho.

2. I am counsel of record for Plaintiff Sharon R. Hammer in the above action.

AFFIDAVIT OF COUNSEL IN SUPPORT OF PLAINTIFF'S RESPONSE
TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT - 1

3. Attached hereto as Exhibit 1 is a true and correct copy of the AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, filed on July 22, 2014, in Case No. 1:13-cv-211-EJL, In the United States District Court for the District of Idaho.

4. Attached hereto as Exhibit 2 is a true and correct copy of the January 25, 2012 newspaper article published by the Idaho Mountain Express.

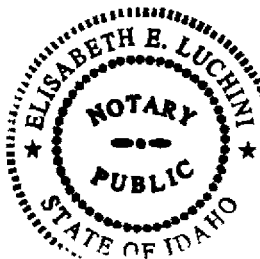
5. Attached hereto as Exhibit 3 is a true and correct copy of the Tolling Agreement between Ms. Hammer and Sun Valley, dated May 8, 2012.

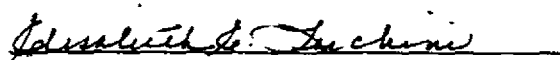
6. Attached hereto as Exhibit 4 is a true and correct copy of the Extension of Tolling Agreement between Ms. Hammer and Sun Valley, dated May 24, 2012.

FURTHER AFFIANT SAYETH NAUGHT.


JOY M. VEGA

SUBSCRIBED AND SWORN TO before me this 1st day of December, 2014.




Notary Public for Idaho
My Commission expires 07.13.2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
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Rupert, ID 83350

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ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

Eric B. Swartz, ISB #6396
Joy M. Vega, ISB #7887
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P.O. Box 7808
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Telephone: (208) 489-8989
Facsimile: (208) 489-8988
Email: eric@jonesandswartzlaw.com
joy@jonesandswartzlaw.com

Attorneys for Plaintiffs Sharon R. Hammer and James R. Donoval

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SHARON R. HAMMER and JAMES R. DONOVAL,
husband and wife,

Plaintiffs,

vs.

CITY OF SUN VALLEY; NILS RIBI, in his
individual and official capacity; and **DEWAYNE**
BRISCOE, in his individual and official capacity,

Defendants.

Case No. 2013-cv-00211-EJL

AFFIDAVIT OF
SHARON R. HAMMER IN
SUPPORT OF RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT [DN 47]

STATE OF IDAHO)
: ss.
County of Ada)

I, Sharon R. Hammer, being first duly sworn upon oath, depose and state as follows:

1. I am a named Plaintiff in the above-captioned matter.
2. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - I

3. On September 15, 2011, I was employed by the City of Sun Valley ("City" or "Sun Valley") as the Sun Valley City Administrator. On that day I personally attended and participated in a scheduled meeting of the Sun Valley City Council ("Council") that was held in the Council Chamber at Sun Valley City Hall.

4. A topic of discussion during the meeting was certain pre-approved budgeted items and whether an amendment to the City budget was required at that time. This topic included discussion regarding generally acceptable accounting methods for modifying budgeted line items.

5. The Council took a break and I walked up to the front receptionist area of City Hall to make copies of certain documents that were being discussed in the meeting.

6. On his own volition, Mr. Ribí followed me to the receptionist area. He then began demanding that I make changes to the City budget and certain budget documents based on his unilateral opinions of what the budget should contain. In response, I attempted to explain to Mr. Ribí the generally accepted accounting practices and procedures for modifying municipal budgets. I attempted to explain this to him so that he would understand that his personal demands of me were unacceptable and contrary to generally accepted accounting practices for municipal government. Mr. Ribí became increasingly and very agitated, and continuously interrupted me, telling me how he wanted the particular procedure done.

7. Every time that I tried to re-explain the correct budgeting procedures, Mr. Ribí would cut me off, raise his arms in the air and waive his hands, saying angrily: "You don't understand!" As the conversation continued, I perceived that Mr. Ribí was becoming more and more enraged.

8. Eventually, I told Mr. Ribí that I was just going to talk with Mayor Wayne Willich. At that point, Mr. Ribí raised his arms up and at me and leaned towards me, in what I perceived to be a very violent and physical threatening motion, puffed up his chest, and yelled at me: "No! You will not talk to the Mayor!"

9. In response to Mr. Ribí's physically and verbally violent outburst, my heart began racing, and I was extremely fearful that Mr. Ribí was going to imminently physically strike me with his hands or arms. I was fearful for my safety. Instinctively, I stepped back and away from Mr. Ribí, and said: "Whoa!" I believe that during this confrontation Mr. Ribí intended to either cause me physical harm or make me fearful that he was going to strike me at that moment.

10. I then turned away from Mr. Ribí and walked down the hallway back to the Council Chamber where Mayor Willich and other Council Members and City staff were. I took my seat at the City Administrator's table. I engaged Councilman Robert Youngman in a conversation about the proposed budget amendment. Mr. Ribí sat down at his seat on the opposite end of the dais from me. He overheard my conversation with Councilman Youngman, slammed the table in front of him with his hands, and yelled, "We are trying to make a point!" Councilman Youngman responded by saying to Mr. Ribí, "Shut your mouth!"

11. Prior to Mr. Ribí's assault on me, I had made numerous complaints to Mayor Willich, Police Chief Cam Daggett, and the City's attorney, Adam King, regarding Mr. Ribí's harassment and hostility directed towards me during numerous confrontations that he had initiated. Included in some of those complaints, I told these City representatives that I was becoming increasingly fearful of Mr. Ribí and concerned that he would someday become physically violent towards me. After the September 15, 2011 Council meeting, I told each of these City representatives about the assault by Mr. Ribí and asked each for advice on how I could

protect myself from him. I believe that on September 15, 2011, Mr. Ribí harbored significant ill-will and hatred for me because I had complained about him to Mayor Willich, Police Chief Daggett and Mr. King.

12. I was terminated from my employment with the City on January 19, 2012. Following my termination I have been unable to secure new employment within my career field of local government management.

13. Within weeks of being fired, I began applying for positions of Town Manager, Town Administrator, City Manager, County Manager, Assistant City Manager, Finance Director, etc. with communities in Idaho, Colorado, Oregon, Washington, Oklahoma, Delaware, and Arizona. Attached hereto as Exhibit 1 is a true and correct copy of the Job Search Summary that I have kept.

14. In March 2012, I applied for jobs with two municipalities in Washington. Greg Prothman, the executive recruiter who had recruited me to the Sun Valley City Administrator position, was the recruiter for each of the Washington positions. Mr. Prothman and I set up a Skype interview. During the interview he told me that he did not need to discuss my professional skills because he knew I could do the job. Instead, he only wanted to know about what happened in Sun Valley. Mr. Prothman was very concerned with the fact that I had sued the City and Councilmembers. And, regardless of my explanation of why I had filed a lawsuit, it was clear to me that because I had sued Sun Valley and sitting Councilmembers, Mr. Prothman was no longer interested in me as a candidate for any position that he was recruiting for.

15. I interviewed with about a third of the prospective employers. With each of the employers that I interviewed with I always received excellent and positive feedback after the initial interview. Undoubtedly though, within each interview process one of the interviewers

would have conducted independent online research about me and would see the press releases paid for by Sun Valley, the near daily blog postings by Mr. Ribí, and the weekly articles in the Idaho Mountain Express – all about my termination, the ongoing investigations against me, and the statements by City representatives about my alleged misconduct and criminal conduct. After the issue of Sun Valley came up, the whole tenor of the interview process changed from positive and energetic to awkward, tense and accusatory. Several times in the course of each of interview, I was asked about the situation with Sun Valley and why I was terminated. No matter how hard I tried to redirect the interviewers to my professional abilities, they always came back to the allegations by Sun Valley. And, because the investigations initiated by Sun Valley were ongoing, each interviewer would want to know when the investigations would be concluded.

16. I was one of three finalists with the City of Bend, Oregon. I was also a finalist with the City of McCall, Idaho. But I received no job offer. I have not received any job offers in the field of local government management. I believe that I have not received a job offer because of all of the negative online publicity paid for and promoted by the City of Sun Valley and its representatives.

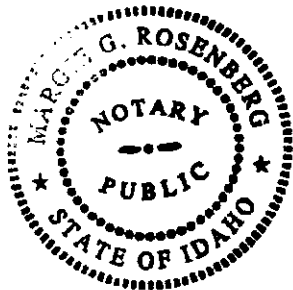
17. Since January 2012, I have done everything that I can do to present myself as a professional and viable candidate. I consulted with online reputation management companies. I created and maintained online profiles to highlight my professional abilities. I sought out several more-seasoned city managers who had also gone through difficult firings to get advice on how to manage the situation created by Sun Valley. I conducted extensive researched about how to overcome a negative employment experience. I always provided comprehensive application materials for every position I applied for. I followed up with every prospective employer who asked for more information or for an interview. I even researched the best way to conduct

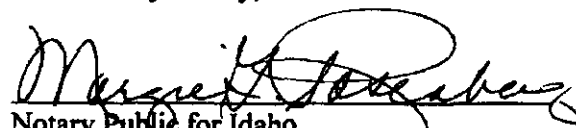
interviews by Skype. Regardless of the efforts that I have taken to present myself, Sun Valley and its representatives have destroyed all prospects I have for working in my chosen career field of local management administration.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.


SHARON R. HAMMER

SUBSCRIBED AND SWORN to before me this 21st day of July, 2014.

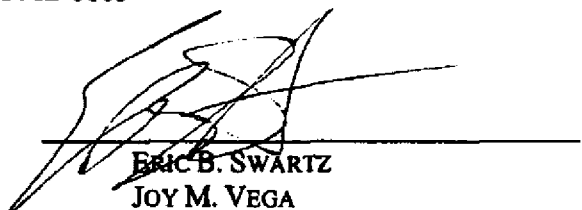



Notary Public for Idaho
My Commission expires 5/11/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of July, 2014, I filed the foregoing document electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kirtlan G. Naylor, kirt@naylorhales.com
Tyler D. Williams, tdw@naylorhales.com
Jacob H. Naylor, jake@naylorhales.com
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103



ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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TO AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

	A	B	C	D	E	F	G
1	Hammer Job Search						
2	City/County	State	Position	Search Firm	Interview Process	Salary Range	Date Applied
3	2012						
4	Dillion	CO	Town Manager	Fred Rainguet KRW Associates, LLC	Telephone interview with Fred Rainguet. He sounded very interested in my experience. He asked me about what happened in Sun Valley and I did not hear from him again.	\$100,000 - \$110,000	1/30/2012
5	Estes Park	CO	Town Administrator	Gary Suiter The Mercer Group	Submitted resume. Did not move through the interview process.	\$114,000 - \$135,000	2/8/2012
6	Sherwood	OR	City Manager	Heather Gantz Waldron Consulting Firm	Telephone interview with Heather Gantz and Jeremy Parks. They asked me about working with the City Council in Sun Valley and why I was terminated. Did not get a second interview.	\$115,000 - \$130,000	2/23/2012
7	Garfield County	CO	County Manager	Phil McKenny Peckham & McKenny	Telephone interview with Phil McKenny. He sounded very interested in my experience. He asked me about what happened in Sun Valley and I did not hear from him again.	\$105,137 - \$131,421	2/24/2012
8	North Bend	WA	City Administrator	Did not use an external search firm. Cheryl Proffitt-Schmidt, Administrative Services Director	Submitted resume. Did not move through the interview process.	\$98,234 - \$120,216	2/24/2012
9	Bend	OR	Assistant City Manager	Did not use an external search firm.	I traveled to Bend to introduce myself to the city manager. He meet with me for a brief introduction. I was subsequently interviewed by Skype and then invited out for an in person interview as one of three finalist for the position. What happened in Sun Valley came up in every interview.	DOQ	2/22/2012
10	Liberty	WA	City Administrator	Did not apply		DOQ	
11	La Plata County	CO	County Manager	Did not use an external search firm.	I traveled to Durango to introduce myself to the human resources director, Kelly Ganevsky. She meet with me and we discussed the county manager position. She asked me extensive questions about what happened in Sun Valley.	\$125,000 - \$145,000	3/6/2012
12	Issaquah	WA	Deputy City Administrator	Greg Prothman Prothman	Did not receive an interview	\$124,584 - \$158,998	3/10/2012

	A	B	C	D	E	F	G
2	City/County	State	Position	Search Firm	Interview Process	Salary Range	Date Applied
13	Lake Forest	WA	City Administrator	Greg Prothman Prothman	Interviewed with Greg Prothman via Skype. I had met Greg when I was interviewing for positions when I left Oak Park, IL. Sun Valley used Greg when Sun Valley hired me in 2008. During this interview he said he did not need to discuss my administration skills because he knew I could do the job. He wanted to know what happened in SV. We spoke for about 45 minutes and he only wanted to discuss what happened in SV. Following the interview I wrote Greg a letter further explaining the situation. I did not move through the interview process.	\$115,000 - \$135,000	3/20/2012
14	Arvada	CO	Deputy City Administrator	Bob Murphy & Associates	I spoke with Bob Murphy and told him I was going to submit my resume for the position. I told him that I was going to be in town and asked if I could stop by and introduce myself. He suggested that I contact Deputy City Manager, Bill Ray. I met with Mr. Ray while in Denver. He asked me about what happened in SV. I did not proceed through the interview process.	\$122,442 - \$152,050	3/19/2012
15	Loveland	CO	Finance Director	Search conducted internally	Did not receive an interview	\$89,359 - \$116,167	4/7/2012
16	Greenwood	CO	Director of Finance	Search conducted internally	No response	\$99,144 - \$142,440	4/18/2012
17	Twin Falls	ID	Power Engineers - Business Development Coordinator		No response	DOQ	4/27/2012
18	Greenwood	CO	Assistant TO City Manager	Search conducted internally	No response	DOQ	
19	Choctaw	OK	City Manager	Larry Shelton Chell Consulting, LLC	I was notified via email that I made the first cut of resumes. I was asked to complete a background check and release form. I did not proceed through the interview process.	DOQ	4/18/2012
20	Newark	DE	City Manager	Robert Slavin Slavin Management Consultants	Submitted resume. Did not move through the interview process.	DOQ	4/30/2012
21	Damascus	OR	City Manager	Heather Gantz Waldron Consulting Firm	Submitted resume. Did not move through the interview process.	\$100,000 - \$120,000	4/30/2012
22	Ketchum	ID	Environmental Resources Center - Executive Director	Search conducted internally	I spoke with the previous executive director who had moved to the ED position with the Goldmine Thrift Store. I had not previously known him. He was excited about my interest in the position. I attempted several follow up conversations but could not reach him.	DOQ	5/12/2012
23	Oak Ridge	OR	City Administrator	Search conducted internally	Submitted resume. Did not move through the interview process.	\$65,000 - \$75,000	5/17/2012

	A	B	C	D	E	F	G
2	City/County	State	Position	Search Firm	Interview Process	Salary Range	Date Applied
24	New Castle	CO	Town Administrator	Search conducted internally	I interviewed via Skype with the city council. The interview went very well and they specifically mentioned being impressed with the emergency management training that I have. They asked what happened in SV and the issue was discussed extensively. I received an email that said that the council felt that my "interview was outstanding" but they selected other candidates to proceed through the interview process.	\$85,000 - \$90,000	5/31/2012
25	Chandler	AZ	Assistant City Manager	CPS HR Consulting	Submitted resume. Did not move through the interview process.	\$128,831 - \$180,363	6/8/2012
26	Gilbert	AZ	Assistant TO the Town Manager	Search conducted internally	Interviewed via telephone with the assistant city manager and the human resource analyst. They asked why I was terminated in SV. I did not hear back from them after the interview.	\$70,864 - \$99,207	6/3/2012
27	Hailey	ID	Executive Director Blaine Co Drug Coalition	Search conducted internally	I interviewed with the Board of Directors. I knew a couple of the board members from my work in the community. Larry Schoen was a Blaine Co Commissioner and I knew him very well. Also, my hairdresser was a new member of the Board but did not attend the interview. The interview went very well until they asked about what happened in SV. I could feel the energy drain from the room when we started talking about SV. Later my hairdresser told me that Larry Schoen had said that he felt that they could not hire me because I was too controversial.	\$60,000 - \$82,000	6/28/2013
28	McCall	ID	City Manager	Search conducted internally	I initially interviewed via Skype with the Mayor and council members. The interview was going very well given the similarities between the cities of McCall and SV. I knew the CM that was leaving the position fairly well. I had worked with him on the Idaho City Manager's Association. They asked about what happened in SV and the atmosphere changed significantly and they seemed less interested. I was asked to participate in a 2nd Skype interview. That interview was entirely about what happened in SV and lasted for approximately 45 minutes. I did not proceed through the interview process.	DOQ	6/20/2012
29	Avon	CO	Town Manager	The Morrison Group, LLC	Submitted resume. Did not move through the interview process. Virginia Egger was hired as the Town Manager. Virginia was the Sun Valley City Administrator prior to me. She was terminated by the City and then rehired after I was terminated.	\$135,000 - \$165,000	6/8/2012

	A	B	C	D	E	F	G
2	City/County	State	Position	Search Firm	Interview Process	Salary Range	Date Applied
30	Salem	OR	Deputy City Manager	Search conducted internally	Submitted resume. Did not move through the interview process.	\$104,764 - \$132,775	7/13/2012
31	Ketchum	ID	Community Library Executive Director		Did not submit resume	DOQ	7/18/2012
32	2013						
33	Boise	ID	Idaho Smart Growth - Executive Director	Search conducted internally	Submitted resume did not move through the interview process.	DOQ	4/6/2013
34	Boise	ID	Idaho Association of Soil Conservation Districts - Executive Director	Search conducted internally	I called the Board President Kit Tillotson and spoke to him about the position. He sounded very interested in my experience. He asked me why I was no longer working in local government. I Submitted resume did not move through the interview process.	DOQ	6/12/2013
35	Boise	ID	Idaho Housing and Finance Association - HOME Construction Finance Coordinator	Search conducted internally	Submitted resume did not move through the interview process.	DOQ	7/10/2013
36	Meridian	ID	City of Meridian ID - Business Operations Manager - Public Works Dept	Search conducted internally	I had several interviews for this position. Initially a phone interview with the human resources director and the deputy public works director. I had a subsequent phone interview with the same two individuals. I was invited for an in person interview with the same people who conducted the phone interview and the public works director. The interview was extensive and I felt was going very well. At the end of the hour the PW Director said "Idaho is a small town and we have read about what happened on the internet. Would you like to tell us your side of the story." We discussed the issue for another half hour. I could feel their enthusiasm for me decrease as we discussed SV. I received a phone message the following week that they "committee had decided to continue their search."	\$52,344 - \$65,424	7/17/2013
37	Boise	ID	Advocates for the West - Executive Director	Search conducted internally	Submitted resume did not move through the interview process.	DOQ	9/6/2013
38	Ketchum	ID	City Administrator	Phil McKenny Peckham & McKenny	Submitted resume and cover letter via company's website. Did not move through the interview process.	\$129,898 - \$166,534.	5/9/2014
39	Ontario	OR	City Administrator	CH2M Hill	CH2M Hill is contracting with the City of Ontario, OR for work and I spoke with City Engineer re: contract work as City Administrator.	DOQ	5/7/2014

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

Wednesday, January 25, 2012

News

Sun Valley terminates administrator's contract

By REBECCA MEANY
Express Staff Writer

Following an executive session Thursday, the Sun Valley City Council reconvened in public session and voted to approve the termination of City Administrator Sharon Hammer's employment contract.

Mayor Dewayne Briscoe announced that Hammer would be offered a lump-sum severance payment of six months' base salary.



Sharon Hammer

Briscoe declined to comment on the reason for the contract termination, which was effective immediately. He deferred the question to Kirtlan Naylor, a Boise attorney appointed by the city's insurance carrier to represent the city in the matter.

In an email to the Idaho Mountain Express, Naylor did not comment on the reason for the termination, but said the severance payment was contingent upon her not suing the city regarding her termination.

"This would include conduct by city elected officials and employees acting in their official capacities," he said.

Whether she would be prohibited from filing a lawsuit on other issues, Naylor said, "[T]o quote [Hammer's attorney], Mr. [Jim] Donoval, 'Anyone can sue anyone if they want.' Only the court can stop someone from filing frivolous lawsuits."

Donoval said after the meeting that Hammer's contract

allows for termination without cause providing that the city pays her six months' salary.

Donoval said that means the city admits it doesn't have any legal complaint against Hammer that caused the termination.

When asked whether Hammer's termination was with or without cause, Naylor said, "There was no stated cause."

Hammer had been placed on paid leave in November and December by then-Mayor Wayne Willich, who returned her to active duty for a few days. Briscoe placed her on leave again Jan. 4 one day after he was sworn into office.

A conflict between Hammer and the city erupted publicly last November, when she filed a lawsuit against the city, Councilmen Nils Ribi and Bob Youngman, and City Attorney Adam King. In the suit, she alleged that Ribi repeatedly harassed her and, when she complained to Willich, Ribi sought to have her terminated from her position. She also alleged that Youngman and King colluded in that effort, and that the city should have done more to protect her from Ribi.

She sued under the Idaho Protection of Public Employees Act. Hammer dropped her suit against the city and the other defendants on Jan. 12, while retaining the right to refile.

Other, related lawsuits are still pending in 5th District Court.

As for Hammer and Donoval's next move?

"We're going to take a couple of days and figure out what we're going to do," Donoval said Tuesday.

Meanwhile, Briscoe said he has been handling the duties of the city administrator. The city has not made clear if or when it will hire someone to replace Hammer.

Rebecca Meany: rmeany@mtexpress.com

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 3
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

TOLLING AGREEMENT

This tolling agreement ("the Agreement") is made as of **May 8, 2012**, by and between **SHARON R. HAMMER** ("Ms. Hammer" or "Prospective Plaintiff"), by and through her legal counsel, Jones & Swartz PLLC, and the **CITY OF SUN VALLEY** and its current and former employees, elected officials, and other agents, counsel or representatives in any capacity ("Prospective Defendants"), by and through their legal counsel, Naylor & Hales, P.C.

Ms. Hammer claims to have suffered injuries beginning on or about November 11, 2011. Ms. Hammer has previously identified certain claims and damages in her initial Idaho Protection of Public Employees Act ("IPPEA") suit, filed November 21, 2011; and in her three previous Notices of Tort Claim, dated December 14, 2011, December 26, 2011, and December 30, 2011. Ms. Hammer believes that new and additional claims are available to her as a result of the Prospective Defendants' alleged additional and/or ongoing conduct. As a result of all incidents identified in the above-referenced matters, and all subsequent and ongoing incidents regarding or relating to Ms. Hammer's employment with the City of Sun Valley, she claims to have been injured by the Prospective Defendants' alleged violations of her common law, state and federal rights.

The parties to this Agreement acknowledge that the applicable statutes of limitation would require the Prospective Plaintiff to re-file and/or amend her IPPEA suit and/or serve another notice of tort claim upon the City of Sun Valley, to include and/or identify additional defendants, allegations and statements of injury, no later than May 9, 2012. However, the parties to this Agreement desire an opportunity to further discuss settlement of the matter prior to the IPPEA suit being re-filed and/or the additional notice of tort claim being served.

For these reasons, the parties to this Agreement mutually agree that the applicable statutes of limitation shall be tolled as described below and that, at the end of the tolling period, if the matter has not been settled, the Prospective Plaintiff may file suit against the Prospective Defendants as she deems necessary without any prejudice whatsoever.

The Prospective Plaintiff and the Prospective Defendants agree as follows:

1. **Term of Tolling Period** - Unless extended in accordance with the provisions of this Agreement, the "Tolling Period" for the Prospective Plaintiff shall run through and include May 30, 2012. The Tolling Period shall begin to run on the "Effective Date" which shall be May 8, 2012.
2. **Termination of Tolling Period** - The Tolling Period will expire by its own terms at 11:59 p.m., on May 30, 2012.
3. **Extension of Tolling Period** - The parties to this Agreement may choose to extend the Tolling Period by execution of an appropriate written extension agreement.

4. **No Litigation During Tolling Period** - During the Tolling Period the parties to this Agreement shall not commence any litigation, arbitration or other proceeding against each other on any claim or issue whatsoever arising from Ms. Hammer's employment with the City of Sun Valley, her termination from said employment, or any other related incidents in which Ms. Hammer claims to have been injured.

5. **Tolling of Limitation Period** - Any and all applicable statutes of limitation or repose, whether statutory, contractual or common law, shall be tolled during the term of the Tolling Period with respect to any claim or issue between the Prospective Plaintiff and Prospective Defendants whatsoever. The parties to this Agreement may not assert in reliance on the passage of time during the Tolling Period any claim or defense of waiver, estoppel, laches or any similar claim or defense. However, nothing in this Agreement shall preclude any party from relying on the passage of time either before the Tolling Period has begun or after the Tolling Period has ended in support of any claim or defense.

6. **Written Notice** - Where this Agreement requires or permits written notice, the party giving such written notice shall send it by facsimile or messenger delivery to legal counsel for the non-noticing party.

7. **No Waiver of Claims** - Nothing in this Agreement is intended as, shall constitute, or shall be used as evidence of an admission of wrongdoing or liability, including comparative liability or fault, a waiver of any right or defense in subsequent litigation, an estoppel, or an admission as to any other matter of fact or law. The parties shall be entitled to use this Agreement to enforce the terms of the Agreement.

8. **Use of Discovery** - The parties to this Agreement agree that the informal exchange of information shall not preclude either party from initiating discovery in any subsequent litigation between the parties to this Agreement provided the parties to this Agreement agree to use best efforts to avoid duplicating discovery already taken.

9. **Binding on Assigns** - This Agreement shall be binding upon and inure to the benefit of the original parties who opted to be governed by its terms along with their respective heirs, legal representatives, predecessors, successors and assigns.

10. **Governing Law** - This Agreement shall be governed by the laws of the State of Idaho and construed in accordance therewith.

11. **Counterparts** - This Agreement may be executed in one or more counterparts, each constituting a binding original. Any of the parties hereto, their authorized representative or legal counsel may execute this Agreement by signing any such counterpart.

12. **Entire Agreement** - This Agreement sets forth the entire agreement of the parties. No other terms are binding on the parties except those found within this Agreement. Any changes to this Agreement must be made in a writing signed by the parties, their authorized representative or legal counsel.

13. **Waiver** – A waiver by either party of any term or condition of this Agreement or any breach of any term or condition, in any instance, shall not be construed as a waiver of any other term or condition, shall not constitute a waiver of a similar breach in the future, or of any other breach, and shall not nullify the effectiveness of such provision.

14. **Headings** – The headings used in this Agreement are for convenience purposes only and shall not be used to interpret or construe its provisions.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ

JOY M. VEGA

Attorneys for Sharon R. Hammer

NAYLOR & HALES, P.C.

By


KIRTLAN G. NAYLOR

*Attorneys for City of Sun Valley, its employees,
elected officials, and agents*

For:

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 4
TO AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT

EXTENSION OF TOLLING AGREEMENT

This extension to the May 8, 2012 Tolling Agreement ("Extension") is made as of **May 24, 2012**, by and between **SHARON R. HAMMER** ("Ms. Hammer" or "Prospective Plaintiff"), by and through her legal counsel, Jones & Swartz PLLC, and the **CITY OF SUN VALLEY** and its current and former employees, elected officials, and other agents, counsel or representatives, in any capacity ("Prospective Defendants"), by and through their legal counsel, Naylor & Hales, P.C.

This Extension incorporates by reference all recitals, terms and conditions of the Tolling Agreement as if restated in full herein. This Extension does not alter or amend any aspect of the Tolling Agreement, except as stated herein.

As of the date of this Extension, the parties continue to require an opportunity to further discuss settlement of the matter prior to the pending IPPEA suit being re-filed and/or the additional notice of tort claim being served, as described in the Tolling Agreement. Pursuant to Paragraph 12 of the Tolling Agreement, any changes to that Tolling Agreement must be made in a writing signed by the parties, their authorized representative or legal counsel.


The Prospective Plaintiff and the Prospective Defendants further agree as follows:

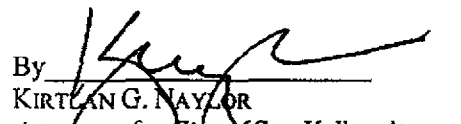
1. **Term of Tolling Period** - The extended "Tolling Period" for the Prospective Plaintiff shall run through and include June 29, 2012. The Tolling Period shall begin to run on the "Effective Date" which shall be May 24, 2012.
2. **Termination of Tolling Period** - The Tolling Period will expire by its own terms at 11:59 p.m., on June 29, 2012.

All other terms of the May 8, 2012 Tolling Agreement remain in full force and effect as if restated herein.

JONES & SWARTZ PLLC

NAYLOR & HALES, P.C.

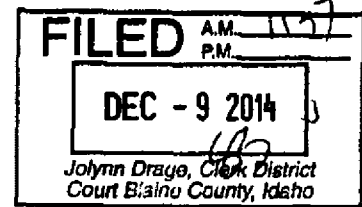
By 
ERIC B. SWARTZ
JOY M. VEGA
Attorneys for Sharon R. Hammer

By 
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Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**REPLY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Sun Valley presents no evidence adverse to the Court finding that no voluntary and knowledgeable intent to waive or release any statutory rights exists and that judgment as a matter of law should be entered in favor of Ms. Hammer. Defendant City of Sun Valley has accepted as true and undisputed all of Plaintiff Sharon R. Hammer's stated material facts that support her Motion for Summary Judgment. Sun Valley does not dispute that it only **purportedly** terminated her without cause, which means that she was actually terminated for cause and

without due process.¹ Sun Valley does not dispute that: “In June 2008, when the [City Administrator Employment Agreement (“Employment Agreement”)] was entered into, there was no intent by either party that Ms. Hammer was waiving or would waive any constitutional or statutory rights, or claims of discrimination, harassment, retaliation, or tort.”² Sun Valley does not dispute that, prior to Ms. Hammer signing the Supplemental Release Pursuant to City Administrator Employment Agreement (“Supplemental Release”), Sun Valley was repeatedly advised that she “would not waive or release any non-contract claim, or type of claim other than those arising from the severance package.”³ Sun Valley does not dispute that “[t]he intent of Ms. Hammer’s release extended only to claims arising out of any dispute related to the severance package.”⁴ Nor does Sun Valley dispute that: “In January 2012, when Ms. Hammer signed the Supplemental Release, she had no intent to relinquish any constitutional or statutory rights or [to] waive any of the claims alleged in the present case.”⁵

Idaho’s law on waiver and release plainly requires that, where an exculpatory clause does not violate public policy, any such relinquishment of rights or claims still requires the act to be made voluntarily and with knowledge. The admitted material facts, and absence of adverse evidence, show the Court that no legal, voluntary or knowledgeable waiver or release was signed by Ms. Hammer in relation to her statutory rights and protections under the Idaho Protection of Public Employees Act (“IPPEA”). Ms. Hammer’s Motion for Summary Judgment should be granted and Sun Valley’s Fifth and Sixth Affirmative Defenses dismissed as a matter of law.⁶

¹ Memorandum in Support of Plaintiff’s Motion for Summary Judgment (“Pltf’s MSJ Supp. Mem.”), filed November 18, 2014, § II, ¶ 30.

² Pltf’s MSJ Supp. Mem., § II, ¶¶ 35-36.

³ Pltf’s MSJ Supp. Mem., § II, ¶ 32.

⁴ Pltf’s MSJ Supp. Mem., § II, ¶ 33.

⁵ Pltf’s MSJ Supp. Mem., § II, ¶ 37.

⁶ Ms. Hammer incorporates by reference the entirety of the legal arguments and evidence submitted in PLAINTIFF’S RESPONSE TO SUN VALLEY’S MOTION FOR SUMMARY JUDGMENT, filed December 2, 2014.

II. ARGUMENT

A. Sun Valley's 2008 Exculpatory Clause and Ms. Hammer's 2012 Release Do Not Absolve Sun Valley of Liability For Its Illegal Actions

1. The exculpatory clause of the Employment Agreement violates the public policy underlying the IPPEA.

Freedom to contract is not limitless. Idaho's rule has historically imposed the restriction that express agreements exempting one party from liability are not enforceable where a public duty is involved. *Rawlings v. Layne & Bowler Pump Co.*, 93 Idaho 496, 499-500, 465 P.2d 107, 110-111 (1970). Sun Valley cannot contract-away its statutory obligations to not retaliate against employees who engage in activities protected by the IPPEA. See I.C. § 6-2104 (codifying protected employee acts). Nor can Sun Valley relieve itself of liability for violations of the IPPEA at the commencement of a relationship with a new employee. See I.C. § 6-2104 (prohibiting employer from certain acts). Sun Valley's attempt to relieve itself of the rule established in *Lee v. Sun Valley Co.*, which expanded invalid exclusions from permissible exculpatory contracts, must also be rejected. 107 Idaho 976, 979, 695 P.2d 361, 364 (1984).

Sun Valley is prohibited from contracting its way out of liability arising from violations of the IPPEA because such liability has been prescribed to it by Idaho's legislature. "[W]e do hold that where the legislature has addressed the rights and duties pertaining to personal injuries arising out of the relationship between two groups, *i.e.*, employers/employees, outfitters and guides/participants, and has granted limited liability to one group in exchange for adherence to specific duties, then such duties become a 'public duty' within the exception to the general rule validating exculpatory contracts." *Lee*, 107 Idaho at 979, 695 P.2d at 364 (1984) (emphasis added). The public policy exclusion from exculpatory contracts is not limited to circumstances involving personal injury. It is also applicable to non-

personal injury statutes, including: employer duties under Idaho's workmen's compensation statutes (*Id.* (citing I.C. § 72-318)); minimum wage statutes (*Id.* (citing *Sherba Bros., Inc. v. Campbell*, 361 So.2d 814 (Fla. App. 1978)); property exemptions from attachment and execution (*Id.* (citing *Iowa Mutual Ins. Co. v. Parr*, 370 P.2d 400 (Kan. 1962)); unemployment compensation statutes (*Id.* (citing *Sw. Bell Tel. Co. v. Employment Sec. Bd. of Review*, 502 P.2d 645 (Kan. 1972)); statutory right of redemption (*Id.* (citing *Elson Dev. Co. v. Ariz. Savings & Loan Ass'n*, 407 P.2d 930 (Ariz. 1965)); and landlord-tenant relationships arising from Idaho's statutory implied warranty of habitability (*Jesse v. Lindsley*, 146 Idaho 70, 233 P.3d 1 (2008)). The import of *Lee*'s rule is that where the legislature has addressed the rights and duties arising out of the relationship between two groups, such as employers and employees, then those codified duties become a "public duty" within the exception to the general rule validating exculpatory contracts. *Lee*, 107 Idaho at 979, 695 P.2d at 364 (1984). This public policy exclusion from the general rules of contract is not new. *Rawlings*, 93 Idaho at 499-500, 465 P.2d at 110-111 (striking exculpatory clause that relieved one party for acts of broad, undefined negligence).

Sun Valley's violation of the IPPEA resulting, in part, from Ms. Hammer's termination in retaliation for engaging in activities protected by the IPPEA implicates important public policy codified by Idaho's legislature. Ms. Hammer's analogy to and reliance on the rule stated in *Lee* is not inapposite or inapplicable. *Lee*, its progeny, and its predecessors all support Ms. Hammer's argument that Sun Valley's attempt to contract its way out of liability arising from its statutory violations is impermissible. Through the IPPEA, Idaho's legislature expressly intended to establish a standard of care dictating government employer response to employee

“whistleblower” activities. I.C. § 6-2101. It would be improper for the Court to imply and enforce a waiver that is an affront to the IPPEA and that the parties did not agree to.

Sun Valley’s legal arguments fail as a matter of law. The Court should grant Ms. Hammer’s Motion for Summary Judgment in its entirety.

2. Inherent in Idaho law is a presumption against the waiver or release of statutory rights.

Idaho law **does** restrict the waiver or release of a known right.⁷ **“Waiver is a voluntary, intentional relinquishment of a known right or advantage.”** *Brand S. Corp. v. King*, 102 Idaho 731, 724, 639 P.2d 429, 432 (1981) (emphasis added) (citing *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963); *Crouch v. Bischoff*, 78 Idaho 364, 304 P.2d 646 (1956)). In order to find an exculpatory clause enforceable, a court must find that the clause “speaks clearly and directly” to the excused wrongdoing. **“Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue.”** *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 178, 595 P.2d 709, 712 (1979) (citations omitted) (rejecting exculpatory language exempting seller from liability for crop loss). Broad exculpatory language cannot be isolated from the context of the clause in which it appears. *Anderson & Nafziger*, 100 Idaho at 178, 595 P.2d at 712.

Contrary to Sun Valley’s blatant misrepresentations of the law and the facts to the Court, Idaho does require waiver of protected rights to be done knowingly and voluntarily. (Def’s.

⁷ The Idaho Supreme Court has repeatedly affirmed that constitutional rights may be waived, so long as the prospective plaintiff (often times a criminal defendant) does so knowingly, voluntarily and intelligently. See, *Smith v. State*, 146 Idaho 822, 834-35 n.11 (2012); *Lubcke v. Boise City/Ada County Hous. Auth.*, 124 Idaho 450, 460 (1993). **“However, the waiver of any fundamental constitutional right is never presumed.”** *Glangary-Gamlin Protective Ass’n v. Bird*, 106 Idaho 84, 90, 675 P.2d 344, 350 (Ct. App. 1983) (citation omitted). **“[T]he waiver must be affirmatively demonstrated.”** *Bird*, 106 Idaho at 90, 675 P.2d at 350. “As a corollary to this definition of waiver, this Court has repeatedly stated that there is a **presumption against waiver** of fundamental constitutional rights.” *Id.* (emphasis added) (citations omitted). *Smith v. State*, 146 Idaho 822, 834-35 n.11 (2012) (citations omitted).

Opp'n to Pl.'s MSJ, p. 7.) Nothing in the record before the Court establishes that Ms. Hammer voluntarily or intentionally relinquished her rights under the IPPEA. To the contrary, the record is replete with evidence that such a waiver and release were **not** contemplated or intended under either the Employment Agreement or the Supplemental Release.⁸ No terms of the Employment Agreement or the Supplemental Release "speak clearly and directly" to exclude Sun Valley's liability under the IPPEA. *Anderson & Nafziger*, 100 Idaho at 178, 595 P.2d at 712; *Jesse*, 146 Idaho at 75, 233 P.3d at 6.

When the language of the Supplemental Release was being negotiated by the parties, Sun Valley did not request or require the Supplemental Release to include specific language releasing Ms. Hammer's rights under the IPPEA.⁹ In fact, Sun Valley drafted its own version of the release that was rejected by Ms. Hammer.¹⁰ After various correspondences with Sun Valley regarding the language of the release, Sun Valley accepted the Supplemental Release from Ms. Hammer.¹¹ And, during those contract negotiations, Sun Valley was put on notice that Ms. Hammer was not releasing any right under the IPPEA.¹²

Without evidence of Ms. Hammer's voluntary intent to waive or release her rights under the IPPEA, no such waiver can legally exist. Ms. Hammer's Motion should be granted.

⁸ Plt's MSJ Supp. Mem., § II, ¶¶ 30-37.

⁹ PLAINTIFF'S RESPONSE TO SUN VALLEY'S MOTION FOR SUMMARY JUDGMENT ("Plt's Resp. to Def's. MSJ"), filed December 2, 2014, § II, ¶¶ 3-5, 7, 16; AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Donoval"), filed November 18, 2014, Exs. 1-3; SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Supp. Aff. of Donoval"), filed contemporaneously herewith, Exs. 1-2. Mr. Donoval's Supplemental Affidavit is filed in reply to, and for the purpose of contradicting, Sun Valley's claim that Ms. Hammer waived all claims (of any kind) as asserted in its opposition to Ms. Hammer's Motion for Summary Judgment.

¹⁰ Supp. Aff. of Donoval, Ex. 2.

¹¹ See Supp. Aff. of Donoval, Exs. 1-2; Aff. of Donoval, Exs. 1-3; AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ("Aff. of Hammer"), filed November 18, 2014, Ex. 2.

¹² Aff. of Donoval, Exs. 1-3.

B. Ms. Hammer and Mayor Willich's Intent is Expressly Referenced and Incorporated Into the Supplemental Release and Can Properly Be Considered By the Court Through Their Testimony

The intent of Ms. Hammer and Sun Valley, as of 2008, is not presented to the Court for the purpose of contradicting, varying or altering the terms of the Employment Agreement. It is presented for the purpose of providing information expressly incorporated by reference into the Supplemental Release. The Supplemental Release purposefully refers back to the intent of Ms. Hammer and Mayor Willich when they signed the Employment Agreement in June 2008:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.¹³

The evidence of record shows that Mayor Willich and Ms. Hammer did not intend the Employment Agreement to “waive any statutory rights or future discrimination, harassment, retaliation or other non-contract claims if the City of Sun Valley chose to ever terminate the Employment Agreement pursuant to the ‘without cause’ provisions of Section 3, Paragraph A.”¹⁴ The Supplemental Release expressly incorporates the Employment Agreement **and** expressly incorporates the intent of Sun Valley and Ms. Hammer when the Employment Agreement was executed.¹⁵

To ascertain the intent of the parties in June 2008, the admissible evidence available to the Court includes the testimony of Mayor Willich and Ms. Hammer.¹⁶ “The primary aim in interpretation of all contracts is to ascertain the mutual intent of the parties at the time the contract

¹³ Aff. of Hammer, Ex. 2 (emphasis added).

¹⁴ AFFIDAVIT OF WAYNE WILlich IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (“Aff. of Willich”), filed November 18, 2014, ¶ 7; Pltf's MSJ Supp. Mem., § II, ¶¶ 30-37.

¹⁵ Aff. of Hammer, Ex. 2.

¹⁶ Aff. of Willich, ¶¶ 2-9; Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22, and Ex. 1.

was made.” *Opportunity, LLC v. Ossewarde*, 136 Idaho 602, 607, 38 P.3d 1258, 1263 (2002) (citation omitted). “If possible, the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent.” *Opportunity, LLC*, 136 Idaho at 607, 38 P.3d at 1263 (citation omitted). And, “when a subsequently executed agreement specifically references and relies on a former agreement, the two are to be interpreted together, if possible.” *Opportunity, LLC*, 136 Idaho at 607, 38 P.3d at 1263 (citing *Silver Syndicate, Inc. v. Sunshine Mining Co.*, 101 Idaho 226, 235, 611 P.2d 1011, 1020 (1979)). “Although parol evidence generally cannot be submitted to contradict, vary, add or subtract from the terms of a written agreement that is deemed unambiguous on its face, **there is an exception to this general rule where a latent ambiguity appears.**” *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011) (emphasis added) (citation omitted). “A latent ambiguity exists where an instrument is clear on its face, but loses that clarity when applied to the facts as they exist.” *Knipe Land Co.*, 151 Idaho at 455, 259 P.3d at 601 (citation omitted).

Latent ambiguities have appeared regarding which of the claims Ms. Hammer intended to release and which she intended to keep through the language, “any claim.” Latent ambiguities have also appeared regarding what Ms. Hammer and Mayor Willich intended when entering into the Employment Agreement in 2008. These latent ambiguities have appeared as a result of varying arguments being presented by the parties in their attempts to apply the Supplemental Release to the facts of the case. Ms. Hammer and Mr. Donoval’s testimony regarding their drafting of the Supplemental Release, and Ms. Hammer and Mayor Willich’s testimony about what they intended when entering into the Employment Agreement in 2008, are appropriate for review in light of such latent ambiguities. *Knipe Land Co., supra*.

Neither Ms. Hammer nor Mayor Willich's testimony defining what the phrase "claims" included varies or contradicts the terms of the Employment Agreement, but instead provides what they defined the word "claims" to mean at the time the Employment Agreement was entered into. The same can be said for Mr. Donoval and Ms. Hammer's testimony about their reference to Ms. Hammer and Mayor Willich's 2008 intent and the "any claim" phrase contained in the Supplemental Release.¹⁷

Latent ambiguities can arise even with the most seemingly understandable term when trying to apply actual facts to the term. For example, in *Mountainview Landowners Coop. Ass'n, Inc. v. Cool*, the Idaho Supreme Court had to look to extrinsic evidence to determine the intent of the parties' use of the term "swimming" in an easement agreement. 139 Idaho 770, 86 P.3d 484 (2004). And, in *United States v. Park*, the Ninth Circuit looked to extrinsic evidence as to what the term "livestock" meant in an easement agreement. 536 F.3d 1058 (9th Cir. 2008). In both *Mountainview* and *Park*, the presumption would be that the definition of the words "swimming" and "livestock" would be readily determinable. But, in both cases, when the facts related to the matter were analyzed against the terms, both courts turned to extrinsic evidence to address the latent ambiguity. The same should be done in this case regarding the term "any claim."¹⁸

The Court must consider the Employment Agreement in light the Supplemental Release's express incorporation of Ms. Hammer and Mayor Willich's intent about the same.¹⁹ In doing so, the only outcome can be that no intent to waive or release Ms. Hammer's rights under the IPPEA has ever existed.²⁰

¹⁷ Aff. of Willich, ¶¶ 2-9; Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22, Ex. 2; Aff. of Donoval, ¶¶ 4-9; Supp. Aff. of Donoval, Exs. 1-2.

¹⁸ Aff. of Hammer, Ex. 2.

¹⁹ Aff. of Willich, ¶¶ 2-9; Aff. of Hammer, ¶¶ 3-4, 7-11, 15-22, Exs. 1 and 2; Aff. of Donoval, ¶¶ 4-9.

²⁰ Plt's MSJ Supp. Mem., § II, ¶¶ 30-37.

C. Judge Lodge's Federal Interim Order Is Not Final Or Binding On This Court

Sun Valley has no reputable legal basis to argue that Judge Lodge's interim Order is applicable in any way to Ms. Hammer's Motion for Summary Judgment. (Def's. Opp'n to Pl.'s MSJ, pp. 2, 6, 7.) The federal MEMORANDUM DECISION AND ORDER relied on by Sun Valley is neither a final judgment nor binding on this Court.²¹ The federal court's Order resulted from Sun Valley's motion for judgment on the pleadings pursuant to Fed. R. Civ. Pro. 12(c).²² It was not a motion for summary judgment that allowed Ms. Hammer to submit evidence.²³ In response to the federal court's issuance of the referenced Order, Ms. Hammer timely filed PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S MEMORANDUM DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS, which is still pending.²⁴ Ms. Hammer also filed PLAINTIFFS' RENEWED MOTION TO AMEND THE SCHEDULING ORDER AND MOTION FOR LEAVE TO AMEND THE COMPLAINT, which is still pending in the federal court.²⁵ And, Ms. Hammer filed PLAINTIFF SHARON HAMMER'S MOTION FOR PARTIAL SUMMARY JUDGMENT regarding certain federal causes of action and state common law claims that the federal court erroneously dismissed and/or that are expected to be revived when the federal court grants the pending Motion for Reconsideration.²⁶ The interim federal Order has no bearing on this Court's grant of Ms. Hammer's Motion for Summary Judgment.

²¹ *Sharon R. Hammer and James R. Donoval v. City of Sun Valley, Nils Ribbi, and DeWayne Briscoe*, Case No. 1:13-cv-211-EJL, In the United States District Court for the District of Idaho ("*Hammer, et al. v. Sun Valley, et al.*"), DNs 41, 44, 44-1, 45, 45-1.

²² *Hammer, et al. v. Sun Valley, et al.*, DNs 18, 41.

²³ *Hammer, et al. v. Sun Valley, et al.*, DNs 41, 22 (Judge Lodge refused to convert the 12(c) motion to a Rule 56 motion).

²⁴ *Hammer, et al. v. Sun Valley, et al.*, DNs 44, 44-1, 51, 57.

²⁵ *Hammer, et al. v. Sun Valley, et al.*, DNs 45, 45-1 – 45-4, 52, 58.

²⁶ *Hammer, et al. v. Sun Valley, et al.*, DNs 48 – 48-44, 50, 53.

Idaho Rule of Civil Procedure 12(b)(8) is not applicable to this matter. That Rule provides a defense arising from “another action pending between the same parties for the same cause of action.” I.R.C.P. 12(b)(8). “The first test is whether the other pending case has gone to judgment.” *Wing v. Amalgamated Sugar Co.*, 106 Idaho 905, 908, 684 P.2d 307, 310 (Ct. App. 1984), *overruled on other grounds by NBC Leasing Co. v. R&T Farms*, 112 Idaho 500, 733 P.2d 721 (1987). “The second test is whether the court, although not barred from deciding the case, should nevertheless refrain from deciding it.” *Klaue v. Hern*, 133 Idaho 437, 440, 988 P.2d 211, 214 (1999) (citing *Wing*, 106 Idaho at 908, 684 P.2d at 310).

In exercising such discretion, a trial court should evaluate the identity of the real parties in interest and the degree to which the claims or issues are similar. The court also may consider the occasionally competing objectives of judicial economy, minimizing costs and delay to the litigants, obtaining prompt and orderly disposition of each claim or issue, and avoiding potentially inconsistent judgments.

Wing, 106 Idaho at 908, 684 P.2d at 310. “The trial court is to consider whether the court in which the matter already is pending is in a position to determine the whole controversy and to settle all the rights of the parties.” *Diet Ctr., Inc. v. Basford*, 124 Idaho 20, 22, 855 P.2d 481, 483 (Ct. App. 1994) (citations omitted). “[W]hether the other court has already exercised jurisdiction is [another] important factor in determining whether to dismiss a parallel Idaho action under Rule 12(b)(8).” *Zaleha v. Rosholt, Robertson & Tucker*, 129 Idaho 532, 534, 927 P.2d 925, 928 (Ct. App. 1996). Sun Valley has not and cannot present argument for this Court’s adoption of any part of the federal Order under Idaho Rule of Civil Procedure 12(b)(8).

Nor may issue preclusion be used to bar this Court from dismissing Sun Valley’s challenged affirmative defenses. “Issue preclusion protects litigants from litigating an identical

issue with the same party or its privity.” *Ticor Title Co. v. Stanion*, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007) (citation omitted).

Five factors are required in order for issue preclusion to bar the relitigation of an issue determined in a prior proceeding: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Ticor Title Co., 144 Idaho at 124, 157 P.3d at 618 (citation omitted). Of the five requisite factors, only the fifth is satisfied when comparing this IPPEA case to the federal Order and pending federal motions. Issue preclusion is not applicable to this case.

No reason exists for this Court to show deference to the federal court under theories of comity. If this Honorable Court has an inclination to rely on the federal Order for any part of its analysis of the competing Motions for Summary Judgment before it, that inclination should be dismissed. The federal court has not issued any judgment in Mr. Hammer’s civil rights violation case. Judge Lodge’s analysis and determinations stated in the Order are far from final. There are at least three motions challenging the erroneous Order currently pending. And, Ms. Hammer has not had an opportunity to appeal any final judgment to the Ninth Circuit. This Court must conduct independent analysis regarding the exculpatory clause in the Employment Agreement and the intent of the Supplemental Release at issue in this case.

This Court has exclusive jurisdiction over Ms. Hammer’s IPPEA claim. No part of the interim federal Order is binding on this Court, and it should be disregarded in its entirety.

III. CONCLUSION

For the foregoing reasons, Plaintiff Sharon R. Hammer respectfully requests that the Court grant her Motion for Summary Judgment in its entirety.

DATED this 8th day of December, 2014.

JONES & SWARTZ PLLC

By


ERIC B. SWARTZ
JOY M. VEGA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
8th & G Streets
P.O. Box 368
Rupert, ID 83350

☒ U.S. Mail
☐ Fax: (208) 436-5272
☐ Overnight Delivery
☐ Hand Delivery
☐ Email:

and on the 9th day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
950 W. Bannock Street, Suite 610
Boise, ID 83702-6103

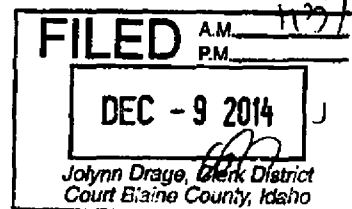
☐ U.S. Mail
☐ Fax: 383-9516
☒ Hand Delivery
☐ Email: kirt@naylorhales.com


ERIC B. SWARTZ
JOY M. VEGA

ORIGINAL

Eric B. Swartz, ISB #6396
 Joy M. Vega, ISB #7887
JONES & SWARTZ PLLC
 1673 W. Shoreline Drive, Suite 200 [83702]
 P.O. Box 7808
 Boise, ID 83707-7808
 Telephone: (208) 489-8989
 Facsimile: (208) 489-8988
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 joy@jonesandswartzlaw.com

Attorneys for Plaintiff Sharon R. Hammer



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**SUPPLEMENTAL AFFIDAVIT OF
 JAMES R. DONOVAL IN SUPPORT
 OF PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
 County of Ada)

I, James R. Donoval, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. I am married to Sharon R. Hammer, who from June 2008 to January 19, 2012, was the City Administrator of the City of Sun Valley, Idaho ("Sun Valley").

SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT - 1

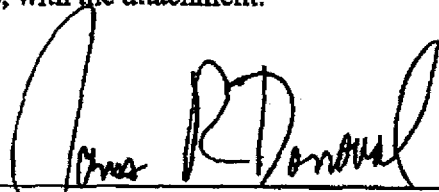
3. I am a licensed attorney in Idaho, having been sworn-in to the Idaho State Bar in October 2009, after having practiced law in Illinois since 1988.

4. Beginning in November 2011, I have represented Ms. Hammer in various matters associated with legal disputes between her, Sun Valley, and various Sun Valley officials and employees.

5. Attached hereto as Exhibit 1 is a true and correct copy of a portion of an email chain between me and Mr. Naylor on January 20, 2012.

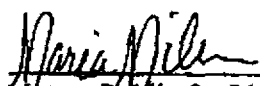
6. Attached hereto as Exhibit 2 is a true and correct copy of a portion of an email chain between me and Mr. Naylor, on January 21, 2012, with the attachment.

FURTHER AFFIANT SAYETH NAUGHT.

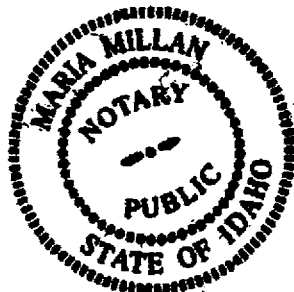


JAMES R. DONOVAL

SUBSCRIBED AND SWORN to before me this 9th day of December, 2014.



Notary Public for Idaho
My Commission expires 9/24/20



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of December, 2014, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

The Honorable Jonathan P. Brody
District Judge
Minidoka County Courthouse
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☐ U.S. Mail
☐ Fax: 383-9516
☒ Hand Delivery
☐ Email: kirt@naylorhales.com


ERIC B. SWARTZ
JOY M. VEGA

EXHIBIT 1
TO SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1
TO SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000288

From: Kirtlan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Subject: RE: Lump Sum payment
Date: Fri, Jan 20, 2012 11:34 am

That won't do. If our accountants tell us this should be considered salary, the only way we will 1099 is if there is an indemnification by your client of all taxes and penalties (including the to the City), if the IRS deems it to be salary.

Also, I just received the signed "release" and demand.

The release language you propose is not adequate. It needs to be identical to the Agreement, which states: "Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley."

Please revise your release agreement to replace the last paragraph with this language, in order for payment to be made:

"I release all claims against the City of Sun Valley."



Kirt Naylor
208.947.2070

From: jdonoval@aol.com [mailto:jdonoval@aol.com]
Sent: Friday, January 20, 2012 10:37 AM
To: Kirtlan Naylor
Subject: Re: Lump Sum payment

As to her portion - yes.
Sent from my Verizon Wireless BlackBerry

From: Kirtlan Naylor <kirt@naylorhales.com>
Date: Fri, 20 Jan 2012 10:03:32 -0700
To: jdonoval@aol.com <jdonoval@aol.com>
Subject: RE: Lump Sum payment

Will she sign an indemnification if there is deemed to be any tax liability for the City if this is deemed salary, requiring withholdings?

Kirtlan G. Naylor
Naylor & Hales, P.C.
950 W. Bannock, Suite 610
Boise, Idaho 83702
Direct 208 947-2070

EXHIBIT 2
TO SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 2
TO SUPPLEMENTAL AFFIDAVIT OF JAMES R. DONOVAL
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

HAMMER 000297

From: Kirtlan Naylor <kirt@naylorhailes.com>

To: Kirtlan Naylor <kirt@naylorhailes.com>; jdonoval <jdonoval@aol.com>

Subject: RE: Lump Sum payment

Date: Sat, Jan 21, 2012 4:03 pm

Attachments: Release.pdf (42K)

Jim,

Also, the limiting language is part of the agreement she signed. So, when it says, "receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley," in essence, the lump sum isn't due until that condition has been met.

You quoted the rest of the paragraph, it seems that to quote the rest is exactly what should be done.

I have attached the acceptable release. If it is not received by 1:00pm Monday, payment will not be able to be made by direct deposit.

(also, your release references January 2011)



Kirt Naylor
208.947.2070

From: Kirtlan Naylor

Sent: Saturday, January 21, 2012 3:36 PM

To: 'jdonoval@aol.com'

Subject: RE: Lump Sum payment

Why is she not signing it before Wednesday?



Kirt Naylor
208.947.2070

From: jdonoval@aol.com [mailto:jdonoval@aol.com]

Sent: Saturday, January 21, 2012 3:34 PM

To: Kirtlan Naylor

Subject: Re: Lump Sum payment

I'm thinking treble damages and attorney fees. Read the statutes. You can't put limiting language on payments. She will sign your release on wednesday specifically under duress. Talk to you on wednesday. Sent from my Verizon Wireless BlackBerry

From: Kirtlan Naylor <kirt@naylorhailes.com>

RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

The City Administrator Employment Agreement dated June 1, 2008 between the City of Sun Valley and Sharon R. Hammer, and as extended by the Extension dated September 17, 2009, states as follows:

The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley.

Therefore, pursuant to the language of the City Administrator Employment Agreement, I state as follows:

"I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City of Sun Valley."

Dated this _____ of January , 2012.

Sharon R. Hammer

James Donoval, Witness

Kirtlan G. Naylor [ISB No. 3569]
Jacob H. Naylor [ISB No. 8474]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.

Attorneys at Law

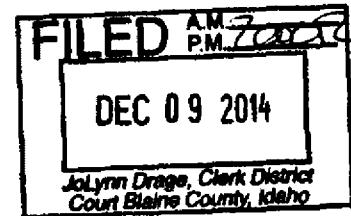
950 W. Bannock Street, Ste. 610

Boise, Idaho 83702

Telephone No. (208) 383-9511

Facsimile No. (208) 383-9516

Email: kirt@naylorhales.com; jake@naylorhales.com; tdw@naylorhales.com



Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**SUN VALLEY'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

**I.
INTRODUCTION**

Sun Valley moved for summary judgment on the primary basis that Hammer waived and later released her whistleblower claim under the plain and unambiguous terms of her 2008 Employment Agreement and 2012 Release. Judge Lodge has already ruled in this respect in a related federal case and his decision there is correct and his reasoning persuasive. This Court should do the same.

SUN VALLEY'S MSJ REPLY MEMORANDUM - 1.

Additionally, even considering the merits of her allegations, Hammer cannot proceed to trial on the basis that Ribi merely allegedly violated the Employee Manual, as it does not constitute a law, rule or regulation under the Whistleblower Act and thus any such alleged violation is not a predicate act implicating the statute. Further, Hammer cannot demonstrate a prima facie whistleblower claim because placing an employee on paid administrative leave pending an investigation is not an adverse action and she cannot demonstrate that her termination was causally connected to complaining about Ribi's alleged misconduct. In fact, Sun Valley had a legitimate, non-discriminatory reason to discharge Hammer (the new mayor determined he would rather vet and hire his own City Administrator because he could not work with Hammer), and it did so under the "without cause" provision of Hammer's Employment Agreement, for which she received a severance payment. Hammer simply cannot show that this was pretext where she expressly acknowledged otherwise when she accepted that money.

Last, in the event any portion of this case were to proceed to trial, the scope of Hammer's damages are limited by the Whistleblower Act. In the unlikely event she prevailed, she cannot recover general damages, including her alleged pain and suffering. Thus, partial summary judgment is appropriate on this issue.

For all these reasons, Sun Valley has shown that summary judgment is appropriate in this case. The burden thus shifted to Hammer to cite to materials in the record or put forth material evidence to overcome summary judgment. As set forth below, however, Hammer has failed to do so. Accordingly, summary judgment should be granted and final judgment entered for Sun Valley.

II. ARGUMENT

A. The Waiver and Release Are Valid And Enforceable

Sun Valley has already responded to Hammer's flawed argument that the waiver and release are invalid because they violate public policy, and need not be further belabored here. (*See* Def's Opposition Memo) There are, however, three issues raised in Hammer's response that were not directly raised in support of her own motion for summary judgment and must be addressed.

First, Hammer contends that there is a presumption in Idaho law against the waiver or release of statutory rights. (Plf's Resp. at 15-16.) This is incorrect. Each of the cases cited by Hammer in support merely stand for the unremarkable proposition that the waiver of fundamental constitutional rights is not presumed. (*See id.* at 15, n. 56). The Whistleblower Act plainly does not involve fundamental constitutional rights and Hammer has not identified any authority that there is a presumption against waiver or release of a whistleblower claim. (*See id.*) In fact, the case law cited by Hammer in support of her motion for summary judgment states just the opposite: in a recreational-use statute claim, a waiver/release is generally valid under basic contract principles unless an exception applies. *Lee v. Sun Valley Co.*, 107 Idaho 976 (1984). Hammer's contention that there is a presumption against the waiver of a statutory claim is simply incorrect.

Second, Hammer contends that Sun Valley is precluded from raising its waiver/release defenses because over two years ago it signed a tolling agreement with Hammer that acknowledged she had alleged various violations of the Whistleblower Act, and Sun Valley attempted to resolve those claims. (Plf's Resp. at 17.) This argument is meritless and has no basis in the Tolling Agreement itself, law, or common sense. In fact, Section 7 of the Tolling Agreement (which

Hammer) specifically precludes the use of the agreement as "a waiver of any right or defense in subsequent litigation, or estoppel, or an admission as to any other matter of fact or law." (Vega Aff., Ex. 3.) Further, the agreement makes clear that Sun Valley merely acknowledged the existence of Hammer's claimed allegations. It states plainly that "Ms. Hammer claims to have suffered injuries" and that she "claims to have been injured by the Prospective Defendants' alleged violations of her common law, state and federal rights." (*Id.* at 1.) Sun Valley certainly did not admit to Hammer's claims nor did it agree to foreclose itself from raising all available defenses in the event settlement negotiations failed.

Third, Hammer argues that the release was not supported by consideration. (Plf's Resp. at 18-20.) This is an argument that Judge Lodge correctly rejected because "consideration for the release of 'any and all claims' was given in the form of the six-months severancy pay which Plaintiffs do not dispute having received." (Judge Lodge's Decision at 16.) It is well settled that contracts must be supported by valid consideration. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526 (2012). Consideration exists when there is something given in exchange for a promise. While consideration is invalid if it is something to which the other party has an absolute right, "forbearance to prosecute a disputed claim is good consideration." *Id.* As Judge Lodge pointed out, the release was in exchange for the severance, which is valid consideration. It is clear under the terms of the Employment Agreement that the severance payment was not an automatic payment to be made upon a termination without cause, but rather was contingent upon Hammer's release of her claims against Sun Valley. She could not receive the severance without her release of all claims.

Hammer tries to negate this fact through her incorrect reliance on *Sarbacher v. AmericCold Realty Trust*, Case No. 1:10-CV-429-BLW, 2011 WL 5520442 (D. Idaho 2011), but this case is

SUN VALLEY'S MSJ REPLY MEMORANDUM - 4.

distinguishable. In *Sarbacher*, there was no election from the employee to accept or reject the severance payment as a contractual condition, rather the employer had a pre-existing duty to pay the severance payment upon a termination without cause. While that case does make the general proposition that severance payments can be considered wages, the court applied an analysis of the context and contractual language regarding the severance payment at issue to determine its application as wages. *Id.* at 9. A similar comparative analysis to the "severance payment" provision of Hammer's Employment Agreement leads to the conclusion that her payment was not considered "wages," and therefore it is valid as consideration for the contractually required release.

More specifically, in *Sarbacher*, the court first noted that simply referring to a payment as "severance" alone is not sufficient to automatically consider a severance payment as "wages." *Sarbacher* at 9. A more thorough analysis of the context and language surrounding the payment is required before immediately disregarding anything given the name "severance." Therefore, although Hammer's payment is referenced as a "severance payment," this does not equate to "wages." The severance payment in *Sarbacher* was specifically classified and negotiated in the employment agreement as wages and an element of compensation, and there was no contractually required additional action (such as a release) from the employee in order to receive it upon a termination without cause. *Id.* at 2. That is not the case here. Hammer's severance payment was not classified as wages and she was only entitled to her severance payment in exchange for a release of all claims. Sun Valley did not owe her the payment unless that condition was satisfied. This constitutes valid consideration.

Further, an analysis of Hammer's severance payment leads to the conclusion that it is more akin to a liquidated damages payment as the Idaho Supreme Court held in *Moore v. Omnicare, Inc.*,

SUN VALLEY'S MSJ REPLY MEMORANDUM - 5.

118 P.3d 141 (2005). In that case, the severance payment was not "compensation for labor or services rendered by an employee," I.C. § 45-601(7), but rather were considered "future wages." The plain language of Hammer's Employment Agreement indicates that the severance payment at issue here, like in *Moore*, "constituted part of a liquidated damages provision due and owing in the event Omnicare terminated Moore 'without cause,'" and therefore is not wages. *Id.* In fact, the Employment Agreement expressly states that the severance pay would be "equal to six (6) months, base salary"; it does not state that it is salary. (Employment Agreement § 3.A) (emphasis added). For these reasons, there was consideration for Hammer's release of her claims against the City of Sun Valley.

B. Hammer Fails to Overcome Summary Judgment on Her Whistleblower Claim

1. The Violation of City Policy Does Not Constitute a Predicate Act Implicating the Idaho Whistleblower Act

Hammer argues that the Employee Manual is a "rule or regulation" for purposes of the Whistleblower Act because it was adopted pursuant to city council resolutions. (Plf's Resp. at 22-24.) In support she relies upon Idaho Code §§ 50-902 and 907(1). However, Section 50-902, by its express terms, does not apply. The statute governs "[t]he passage or adoption of every ordinance, and every resolution or order to enter a contract. . . ." I.C. § 50-902 (emphasis added). An ordinance is a formal legislative act of a city council and the procedures for adopting are prescribed by Idaho Code, Sections 50-901, 901A, and 902. A resolution is different from an ordinance, as it is not enacted in the same manner and does not have the same binding effect. A resolution does not have the force and effect of law, like an ordinance does. *State v. Idaho State Bd. of Land Com'rs*, 150 Idaho 547, 557 (2010) (citing *Balderston v. Brady*, 17 Idaho 567, 577 (1910) (noting that a resolution

"is not enacted in the manner provided for the enactment of law . . . and it is not contended that it is a law.") 20 C.J.S. Counties § 145 (2014).

The Employee Manual is plainly not an ordinance and, though adopted by resolution as an internal administrative policy of the City, is not itself a resolution of any kind, let alone a resolution to enter a contract.¹

Additionally, Hammer's reliance on Idaho Code § 50-907(1), which defines "permanent record" to include ordinances and resolutions, is also misplaced as that provision has no bearing on whether a permanent record is a rule or regulation. While ordinances and resolutions are obviously permanent records, all permanent records are not ordinances or resolutions, or laws, rules or regulations. Indeed, the phrase "permanent record" also includes budget records, cash books and other types of records that in no way could be deemed rules or regulations. *See id.*

Hammer also argues that *Mallonee v. Idaho Department of Correction* (relied upon by Sun Valley for the proposition that employee manuals are not rules or regulations for purposes of the Whistleblower Act) does not apply because the defendant there was IDOC, a public administrative body, not a municipality like Sun Valley. (Plf's Resp. at 22-23.) The distinction is meaningless. At the core of *Mallonee* is that the IDOC policies there did not have the force or effect of law because they were not promulgated under the APA. 139 Idaho at 620. At the state administrative level, the prescribed procedures in the APA (e.g., publishing with comment period, due process) and

¹Hammer also incorrectly states that "[o]nce an ordinance or resolution is adopted by a city council it 'shall be read and received in evidence in all courts and places without further proof.'" (Plf's Resp. at 22) (quoting in part I.C. § 50-902. This provision actually only applies to ordinances, not resolutions. I.C. § 50-902 (last paragraph of statute).

underlying legislative authority is what makes a rule or regulation equivalent to a law for purposes of a Whistleblower claim. *Id.*

Likewise, at the municipal level here, the Employee Manual was not promulgated under the ordinance-making process of Idaho Code §§ 50-902, 901A and 902 and therefore does not have the force and effect of law, like promulgated rules or regulations do per *Mallonee*. Hammer incorrectly states that the *Mallonee* court found that IDOC "policies could not be promulgated as a law, rule or regulation of the state. . . ." (Plf's Resp. at 23.) The issue in *Mallonee* was not, however, about whether IDOC had authority to promulgate policies as rules or regulations. IDOC could have promulgated what was set forth in its policies as rules or regulations, via the APA, but it did not so. Consequently, IDOC's policies were not deemed rules or regulations under the Whistleblower Act. The same is true here: the Employee Manual was not promulgated as an ordinance, and thus is not a law, rule or regulation.

Hammer's argument that violation of Employee Manual can constitute a predicate act because it was adopted by resolution is also unavailing. Unlike an ordinance, a resolution does not have the force and effect of law. With the exception of a resolution to enter into a contract, there is no statutory process for the passage of a resolution, like there is with an ordinance or a state rule or regulation. See Idaho Code § 50-902. Rather, a resolution is simply a device to accomplish any number of city administrative matters, such as adopting an internal personnel policy. Hammer's suggestion that a resolution is equal to an ordinance is based on a flawed reading of Idaho Code § 50-902 and is simply incorrect.

In short, to the extent Hammer supports her Whistleblower claim based on her allegations that one or more city official violated the Employee Manual, she cannot proceed because such is not a predicate act implicating the statute.

2. Hammer Fails to Demonstrate that Her Termination Was a Pretext

Hammer contends that Sun Valley's reasoning for her termination was a pretext because she was not actually fired "without cause".² (Plf's Resp. at 24-27.) This assertion is belied by the fact that she indisputably signed the Release (drafted by her own husband and attorney) which plainly and unambiguously states that Hammer was terminated pursuant to Section 3.A of her Employment Agreement, the "without cause" provision, and for which she accepted the severance payment. Hammer's mere recital of the fact that she had made allegations of harassment by Ribi, and that there had been allegations of wrongdoing against her and others, while relevant to why she was placed on paid administrative leave and investigations began, does not show that her termination under the new mayor was a pretext.

As Judge Lodge clearly explained:

Plaintiffs contend that Ms. Hammer's termination was not "without cause" and, therefore, not subject to the waiver provision of Section 3.A of the Employment Agreement. This argument is contrary to the plain and unambiguous language of the Employment Agreement and the undisputed fact that she accepted the severance payment as provided for in Section 3.A. of the Employment Agreement. Notably, the release Ms. Hammer signed specifically references Section 3.A. of the Employment Agreement which applies to terminations "without cause." To now argue her

²Hammer asserts that *Curlee* stated that the *McDonnell-Douglass* burden shifting analysis does not apply at summary judgment. However, she does not address Sun Valley's position that *Curlee* has been implicitly overruled on that issue. (See Def's Corrected Memo at 18.)

termination was for cause is contrary to the plain and unambiguous language of the documents she affixed her signature to.³

(Lodge Decision at 13-14) (footnote and internal citations omitted).

Hammer's conclusory assertion that she was discharged for some improper reason, even though she acknowledged already in writing that she was discharged "without cause" and received her severance payment, is unsupported by the record and is insufficient to show pretext. Summary judgment is therefore appropriate.

3. Being Placed on Paid Administrative Leave Pending Investigation Is Not an Adverse Action

Hammer lists several alleged actions she contends were adverse employment actions, relying on non-controlling Ninth Circuit and district court case law, arguing that these show a "campaign of harassment and humiliation" sufficient to demonstrate an adverse action for purposes of the Whistleblower Act. (Plf's Resp. at 27-29.) While the Ninth Circuit has taken an expansive view of what may constitute an adverse employment action for purposes of federal retaliatory claims (e.g., Title VII, ADEA), other jurisdictions have not (at least one of which involved a whistleblower claim similar to Idaho's) and Idaho is consistent with those other jurisdictions, as detailed in Sun Valley's opening brief. (*See* Corrected Memo at 21-22.)

To reiterate, to be actionable, an adverse action must include significant changes in employment. *E.g.*, *Hatheway v. Bd. of Regents of Univ. of Idaho*, 155 Idaho 255, 265 (2013). Several jurisdictions have found that this does not include being placed on paid administrative leave pending an investigation. (*See* cases cited in Corrected Memo at 21-22.) This makes sense given the need to

³While Judge Lodge stated this while discussing Hammer's waiver/release, the same logic bears significantly on the issue of pretext.

use paid administrative leave to provide "a reasonable means to immediately neutraliz[e] a potentially contentious situation while minimally affecting the [employee]." *Russo*, 87 A.3d at 407.

The record shows that Michelle Frostenson made allegations of potential misconduct by Hammer, and Hammer was placed on paid administrative leave pending investigation. Hammer's conclusory statements that there were "threats" to terminate her and that the investigation was "biased" are unfounded. And, in any event, she has not shown how even if true such would constitute an adverse employment action. More so, she has not provided any authority showing how Sun Valley informing the public about issues of alleged wrongdoing is actionable under these circumstances and has made no effort to explain why she believes a government should not inform its citizens about matters of such significant public concern. Further, Hammer's belief that there was a "post-termination smear campaign" against her is also not actionable, as by her own concession Sun Valley was no longer her employer during this period and since she was not an employee the Whistleblower Act would not apply to any of her post-termination allegations. *See* I.C. § 6-2104 (prohibiting an employer from retaliating against an employee)

In all, the only plausible adverse action at issue here is her termination, but her claim on that basis fails for other reasons as set forth above in Section B.2 and in Sun Valley's opening brief.

C. Statute of Limitations

Hammer correctly points out the May 2012 Tolling Agreement, which counsel for Sun Valley inadvertently overlooked. While this agreement does not act as a bar to Sun Valley's waiver and release defenses, as Hammer contends, Sun Valley withdraws its argument that the statute of limitations precludes part of Hammer's claim.

D. The Whistleblower Act Limits the Scope of Recoverable Damages

Hammer seeks all available remedies under the Whistleblower Act, including getting her job back with full benefits and seniority rights,⁴ as well as "compensation for lost wages, benefits and other remuneration." She takes this last phrase to mean that she is entitled to prove general damages for pain and suffering. In support, however, she only cites to authority supporting her position that front pay is part of the phrase "lost wages". (See Plf's Resp. at 32.) That authority does not speak to general damages and, as Sun Valley previously argued, is not provided for under the Whistleblower Act. (See Def's Corrected Memo, § C.)

To the extent Hammer suggests the term "other remuneration" is a broad enough catchall that would include pain and suffering, this is not the case. While not defined in the Whistleblower Act, the term "remuneration" refers to a *for quid pro quo*: the consideration an employee received in exchange for her services to the employer. See *Black's Law Dictionary* at 1409 (9th ed. 2009) (defining it as "[p]ayment; compensation" or "[t]he act of paying or compensation."); *Blacks's Law Dictionary* at 1460 (4th ed. 1951) (defining it as "reward; recompense; salary" and a "*quid pro quo*"). These definitions are consistent with the context of Idaho Code § 6-2106(4), which refers to the types of consideration for an employee's services (*i.e.*, "the compensation for lost wages, benefits and other remuneration."). A plain reading of the statute is that "other remuneration" is simply a catchall for the other types of unspecified forms of consideration an employee may receive in the employer-employee *quid pro quo* relationship that is not totally captured in the phrase "compensation

⁴Sun Valley indicated in its opening brief that Hammer was only seeking special and general damages, but as she points out she is also seeking injunctive relief. Sun Valley disputes that, even if she were to prevail, such injunctive relief would be appropriate in this case, but that is not at issue in this motion for summary judgment.

or benefits". Emotional pain and suffering and other types of general, non-economic damages are simply not part of such consideration in the employment relationship, and are thus not included in the phrase "other remuneration."

Not only is this understanding consistent with the Whistleblower statute, it is consistent with how the term "remuneration" is used elsewhere in Idaho statutes. Because the Whistleblower Act relates to public employment, other Idaho statutes related to employment are instructive. For example, under Idaho's Employment Security Law, Idaho Code § 72-1301 *et seq.*, "wages" include "[a]ll remuneration for personal services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash." Idaho Code § 72-1328. Likewise, under Idaho's Workers' Compensation Law, Idaho Code § 72-101 *et seq.*, "wages" means "money payments for services" as well as other forms of remuneration, such as "the reasonable market value of board, rent housing, lodging, fuel and other advantages. . . [and] gratuities received in the course of employment from others than the employer [*e.g.*, tips]." Idaho Code § 72-102(33). Thus, it is apparent that "remuneration" refers to and is limited to the various types of consideration in the employment relationship, and not a broad catch all that includes all imaginable damages.

If the Idaho legislature wanted the phrase "other remuneration" in Idaho Code § 6-2106(4) to include more than types of consideration related to employment, it could have done so. For example, Idaho has created a civil cause of action for the crime of malicious harassment. *See* Idaho Code § 18-7903(b). The legislature took care to spell out the measure of damages more broadly such that "[a] person may be liable to the victim of malicious harassment for both special and general damages, including but not limited to damages for emotional distress, reasonable attorney fees and costs, and punitive damages." *Id.* Further, the statute provides "[t]he penalties provided in this

SUN VALLEY'S MSJ REPLY MEMORANDUM - 13.

section for malicious harassment do not preclude victims from seeking any other remedies, criminal or civil, otherwise available under law." Idaho Code § 18-7903(c).

Similarly, Idaho has created a civil cause of action against any person who violates Idaho Code § 27-502 (related to disturbance of cairns and graves) and a prevailing plaintiff may be awarded, in addition to injunctive relief and attorney fees, actual damages. Idaho Code § 27-504(1), (2). The legislature specifically provided that actual damages under that statute "include special and general damages, which include damages for emotional distress." Idaho Code § 27-504(2).

In addition to damages for lost wages, benefits and other remuneration, the "Whistleblower" Act similarly provides for attorney fees and injunctive relief, Idaho Code § 6-2106(5), but does not go on to specify that a plaintiff may recover for general damages or other special damages unrelated to employment, like the malicious prosecution and protection of grave statutes do.

Lastly, under the federal Whistleblower Protection Act, 5 U.S.C. § 1201 *et seq.*, pertaining to federal employees, damages include "back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential changes." 5 U.S.C. § 1221(g)(1)(A)(ii). This language therefore provides for broader relief going beyond the what is contemplated in the employer-employee relationship.

Thus, under each of the above examples where general damages such as pain and suffering are supported, the respective legislatures specifically drafted language providing for comparatively broad relief. Idaho, however, did not do so for its Whistleblower Act. The remedial provision of the statute is worded in such a way that it limits recovery to economic damages related to an employee's services. General damages are therefore not allowed.

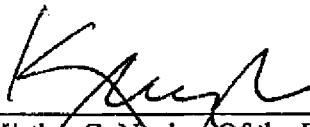
III.

CONCLUSION

As shown in Sun Valley's moving papers and as further set forth above, summary judgment is appropriate. Hammer's Whistleblower Act claim should be dismissed and final judgment entered.

DATED this 9th day of December, 2014.

NAYLOR & HALES, P.C.

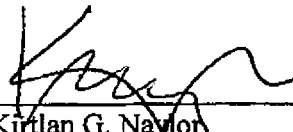
By 
Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of December, 2014, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

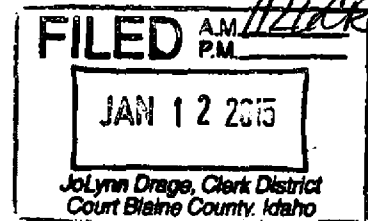
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Kirtlan G. Naylor

8406_38 Sun Valley Reply Memo Supp MSJ.wpd

SUN VALLEY'S MSJ REPLY MEMORANDUM - 15.



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCO,

Defendant.

Case No. CV-2012-479

**MEMORANDUM DECISION
ON MOTIONS FOR
SUMMARY JUDGMENT**

BACKGROUND

On December 16, 2014, the Court heard the parties' arguments on cross motions for summary judgment with respect to the defendant's fifth and sixth affirmative defenses. Defendant's motion also included a request for summary judgment, asserting that plaintiff's allegations do not fall under Idaho's Protection of Public Employees Act (IPPEA), and in the

event they did, possible remedies would be limited beyond what plaintiff requests. The Court ultimately took the motions under advisement.

This case began when plaintiff, Sharon Hammer, filed suit against defendant, City of Sun Valley, for damages under Idaho's Protection of Public Employees Act (IPPEA). The plaintiff contends that she was terminated from her employment with the City of Sun Valley on January 19, 2012 based on the fact that she had reported a city council member's conduct of harassing her. During the same time period, allegations were also made that plaintiff had engaged in inappropriate conduct with respect to the city's management. Plaintiff was placed on administrative leave while an investigation was conducted. Upon conclusion of the investigation no charges were brought, and plaintiff resumed her duties. However, shortly after a new mayor came into office early January 2012, the mayor and city council unanimously decided to terminate plaintiff's employment. Plaintiff was terminated under the "without cause" provision of her employment contract. Pursuant to the "without cause" provision, plaintiff, with her attorney's assistance, drafted and signed a supplemental release of claims in order to secure a severance package. The signed supplemental release reads:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

Section 3.A. of plaintiff's employment contract, which was referenced in plaintiff's release of claims states:

Employer, acting through the Mayor, may terminate Employee's employment, without case, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum

cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

Plaintiff received a severance package and subsequently filed suit against the City of Sun Valley for violation of the Idaho Protection of Public Employees Act (IPPEA). Both parties filed motions for summary judgment in this case regarding defendant Sun Valley's affirmative defenses of waiver and release. Specifically, in its response to plaintiff Sharon Hammer's complaint under the IPPEA, defendant asserts that plaintiff cannot bring suit against Sun Valley because plaintiff had released the city from liability for any and all claims she might have had at the time she was terminated from city employment. Defendant's fifth and sixth affirmative defenses state that "some or all of the Plaintiff's claims are barred by release . . . [or] waiver." Conversely, plaintiff argues that Section 3.A. of her employment contract is unenforceable because it constitutes a prospective waiver and that the supplemental release pertains only to contract and wage claims surrounding severance payment itself and that there was no consideration for the signed release.

Lastly, plaintiff disputes defendant's assertion that, upon plaintiff's termination, the parties simply went their separate ways. It is alleged that the City of Sun Valley or employees thereof conducted a "smear campaign" against plaintiff that has caused her damage. Due to defendant's conduct after plaintiff's termination, plaintiff asserts that even if there were consideration for the supplemental release, it would be insufficient consideration.

ANALYSIS AND DISCUSSION

Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *Scona, Inc. v. Green Willow Trust*, 133 Idaho 283, 286, 985 P.2d 1145, 1148 (1999). The court must liberally construe all disputed facts in favor of the non-moving party, and draw all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. *Wiemer v. Rankin*, 117 Idaho 566, 570, 790 P.2d 347, 351 (1990). If conflicting inferences are possible, summary judgment should be denied. Only if there is no genuine issue of material fact after the affidavits, pleadings, and depositions have been construed in the light most favorable to the non-moving party should summary judgment be awarded. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

This Court finds that no genuine issue of material fact exists in this case because plaintiff's signed supplemental release of claims together with Section 3.A. of her employment agreement present a clear and unambiguous contract. When a contract is clear on its face, there is no need to go outside the four corners of the document. *State v. Gomez*, 153 Idaho 253, 257, 281 P.3d 90, 94 (2012) (“If the language of the document is unambiguous, given its ordinary and well-understood meaning, we will not look beyond the four corners of the agreement to determine the intent of the parties.”). When dealing with extrinsic evidence such as intent, the parol evidence rule pronounces, “[i]f the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the contract.” *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 597 (2001) (quoting

Chambers v. Thomas, 123 Idaho 69, 72, 844 P.2d 698, 701 (1992)). In this case, plaintiff's supplemental release clearly absolves defendant of any liability for claims plaintiff had at the time of her termination. The release operates to "release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement." When looking to Section 3.A. of plaintiff's employment agreement, it unambiguously provides that "severance payment herein is intended to be Employee's sole exclusive remedy for *any and all claims* for damages of any kind arising from a termination without cause." It also goes on to say that "[c]onsequently, receipt of the severance payment is subject to a release of *all claims* against the City of Sun Valley." (emphasis added). Plaintiff argues that Section 3.A. is void as against public policy because it creates a prospective waiver. Although prospective waivers are generally unenforceable, *see E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 616 (9th Cir. 1988), in this case, plaintiff signed a supplemental release after the time she knew of her potential claims against defendant. As defendant correctly points out, there is "nothing to indicate how such a release would violate public policy and, indeed, . . . it makes no sense to forbid the resolution of existing claims." Sun Valley's Opposition to Plaintiff's Motion for Summary Judgment - 4.

While plaintiff asserts that she never intended to release any non-contract claims, the Court declines to consider the parties' subjective intent, where the contract is clear. Even if the Court were to look to the parties' subjective intent outside the four corners of the documents—the supplemental release and Section 3.A. of the employment agreement—the release would be interpreted in favor of defendant. Restatement (Second) of Contracts § 201(2) states:

(2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made

(a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or

(b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.

Restatement (Second) of Contracts § 201 (1981); *see also Johnston v. C.I.R.*, 461 F.3d 1162, 1165 (9th Cir. 2006) (The Court relied on § 201 in determining that “where one party has no reason to know of any other meaning than that apparent from the other party's own words, and the other party did have reason to know the meaning the first party would attach to his words, the first party's understanding prevails.”).

In this case, plaintiff knew defendant's interpretation of the signed release's language.

Plaintiff asserts in her sworn affidavit that:

18. . . . In order to secure my immediate financial security, I was forced to sign a release of claims that was *acceptable to the City*.

19. The language of the Supplemental Release *purposely and intentionally* does not include any mention that I was releasing any non-contract severance benefits.

20. The Supplemental Release *purposely* does not include any waiver or release of any federal statutory claim, any constitutional claim, or any other common law or tort claims that I may have against Sun Valley, its officials or employees.

21. By signing the Supplemental Release I did not intend to, nor did I knowingly or voluntarily waive or release any non-contract claims, such as any claims arising from the IPPEA.

Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment

(emphasis added). Through correspondence with the plaintiff, defendant made clear what kind of release was acceptable. Based on plaintiff's affidavit, the Court finds that she knew or had reason to know that defendant believed the supplemental release pertained to any and all claims, not wage and contract claims only. The contract indicates the supplemental release would apply to *all claims*. At the hearing, plaintiff distinguished between “any” and “all,” but Section 3.A. uses both “any and all” and “all claims” in its language. The language in Section 3.A. is not

ambiguous. But if it is, defendant clearly wanted a release of all claims, and plaintiff knew that. Paragraph 18 of her affidavit indicates she knew what was acceptable to defendant. Defendant also submitted an affidavit from Mayor Willich to support the proposition that a release of non-contract claims was not contemplated. However, the affidavit indicates that he did not discuss the types of claims contemplated in Section 3.A. It is clear that what was intended in 2008 was a release of all claims, based on the plain language of Section 3.A.

Additionally, plaintiff argues that the signed supplemental release in exchange for a severance package lacks consideration because severance payments are in reality wages that have already been earned. Plaintiff relies heavily on *Sarbacher v. AmeriCold Realty Trust*, No. 1:10-CV-429-BLW, 2011 WL 5520442 (D. Idaho Nov. 14, 2011) for the proposition that severance payments constitute wages. However, although that case is unreported and thus non-authoritative, it is distinguishable anyway in that it dealt with an employment contract that provided for a severance package with no strings attached. *See id* at *6–*7. Here, on the other hand, plaintiff's employment agreement provides for a severance package only conditionally. Plaintiff was not entitled to severance payment upon termination alone. This case is more comparable to *Moore v. Omnicare, Inc.*, 141 Idaho 809, 118 P.3d 141 (2005), where the Court determined that liquidated damages for an employee's termination "without cause" were not considered "wages" already earned. Therefore, plaintiff's severance package was not equivalent to wages but instead served as consideration for her signed supplemental release. This case also does not involve a situation to recover unpaid wages. Here, the severance package was paid; Sun Valley was, by paying the claim, giving up any chance it had to say the firing was for cause to avoid payment of the severance package.

Lastly, plaintiff argues that although she was terminated under the “without cause” provision of her employment agreement, she was in reality terminated “for cause” due to criminal allegations against her. While there might have been genuine issues of fact concerning whether plaintiff was terminated “for cause,” she accepted, and impliedly asserted, that she was terminated “without cause” when she elected to receive a severance package. Under her employment contract, plaintiff was to receive a severance package only if terminated “without cause,” and even then, only if she signed a supplemental release. Because plaintiff made the choice to accept the severance package, acknowledging that she was terminated “without cause,” she is now judicially estopped from making the argument that she was actually terminated “for cause.”

Judicial estoppel is appropriate to prevent “a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.” *A & J Const. Co. v. Wood*, 141 Idaho 682, 684, 116 P.3d 12, 14 (2005) (citing *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492, 502 (2004)). “Judicial estoppel is intended to prevent a litigant from playing fast and loose with the courts.” *Id.* (citing *McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997)). Indeed, “[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle.” *Heinze v. Bauer*, 145 Idaho 232, 178 P.3d 597 (2008) (quoting *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001)). Judicial estoppel assists courts in maintaining “the dignity of the judicial process, it is an equitable doctrine invoked by a court at its discretion.” *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 600 (9th Cir. 1996) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990), *cert. denied*, 501 U.S. 1260, 111 S.Ct. 2915, 115 L.Ed.2d 1078 (1991)). Therefore, in the exercise of discretion, this Court applies the equitable

doctrine of judicial estoppel and refuses to consider whether plaintiff was actually terminated "for cause." Plaintiff accepted a substantial benefit based on the fact that she was supposedly terminated "without cause," and this Court declines to allow her to now assume an inconsistent position. Judicial estoppel does not operate in situations where there is coercion or duress. Plaintiff was in a difficult and stressful situation, but she did not suffer duress or coercion; her affidavit indicates she was clearly thinking strategically.

Because defendant's affirmative defense of release clearly and unambiguously applies to any and all claims, plaintiff is barred from bringing her IPPEA suit against defendant. Thus, no genuine issues of material fact need be litigated, and the case must thereby be dismissed. Had there not been a release and the payment of a severance package, there are factual disputes that probably would prevent summary judgment. However, the supplemental release makes the merits of the case moot. Defendant's other reasons for requesting summary judgment need not be addressed, as the signed supplemental release is dispositive in this case. Any claims plaintiff may have that arose after her termination present separate issues and are pending in federal court now or subject to future suits as the case may be.

CONCLUSION

WHEREFORE, this Court hereby orders that plaintiff's motion for summary judgment is DENIED and defendant's motion for summary judgment is GRANTED.

Dated: January 9, 2015

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 12 day of Jan., 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION ON MOTIONS FOR SUMMARY JUDGMENT to each of the persons as listed below:


Eric Swartz
Naylor & Hales, P.C.
950 W. Bannock Street, Ste. 610
Boise, ID 83702

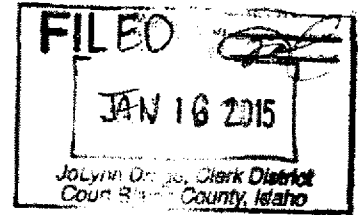
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P.O. Box 7808
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DATED 1/12/2015
CLERK OF THE DISTRICT COURT

BY: 
Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

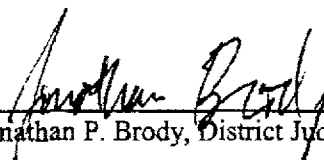
Case No. CV-2012-479

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

The plaintiff's complaint is dismissed with prejudice as to all claims.

DATED this 15th day of January, 2015.


Jonathan P. Brody, District Judge

JUDGMENT- 1.

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of January, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

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Joy M. Vega

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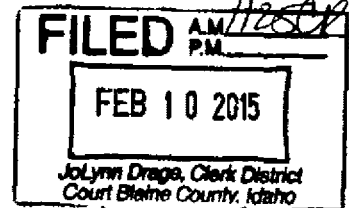
Email: kirt@naylorhales.com

BLAINE COUNTY CLERK



Clerk/Deputy

JUDGMENT- 2.



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCO,

Defendant.

Case No. CV-2012-479

**MEMORANDUM DECISION
ON MOTION TO STAY
PROCEEDINGS ON PETITION
FOR STAY AND MOTION TO
EXPEDITE**

ANALYSIS

Plaintiff has filed a motion to stay proceedings on the petition for fees filed by Defendants. The deadline for response is quickly approaching. There has also been a motion to reconsider filed, and to complicate matters, a motion to withdraw filed by counsel. This Court believes all of the pending issues should be heard on the merits and not have a procedural deadline prevent a substantive response. However, it is unclear why a stay is necessary.

MEMORANDUM DECISION ON MOTION TO STAY PROCEEDINGS ON PETITION FOR STAY AND
MOTION TO EXPEDITE

1 of 3

This Court considered denying the motion to stay on the basis that granting it could actually prejudice the Plaintiff. If the deadline to file a response cannot be extended, to stay the proceedings would prevent a response which the Plaintiff clearly wants to raise. However, after consideration, this Court believes it has the discretion to extend the deadline to file a response to the petition for fees.

It is the Court's understanding that the time for filing a response pursuant to I.R.C.P. 54(d)(6) may be enlarged in the Court's discretion. *Wheeler v. McIntyre*, 100 Idaho 286 (1979). The Plaintiff has set forth reasons why an enlargement is appropriate. However, it is not clear that a stay is necessary or that the issue of fees and costs cannot be decided at a hearing on the motion to reconsider. The motion to withdraw could also affect the status of the case.

Thus, in the exercise of discretion, the time to file a response to the petition for fees is extended until March 2, 2015, by the close of business. This will prevent the Plaintiff from losing the ability to challenge costs while issues of representation are sorted out. A status hearing may be helpful as well.

CONCLUSION

WHEREFORE, this Court hereby orders that the deadline to respond to the petition for fees is extended until March 2, 2015, by the close of business. The motion to stay is thus denied and the motion to expedite moot.

Dated: 2/10/15
Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 10 day of Feb, 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION ON MOTIONS FOR SUMMARY JUDGMENT to each of the persons as listed below:

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☐ Overnight Mail
☒ ~~Via Facsimile~~ email

Jim Donaval

☒ email

DATED 2/10/15
CLERK OF THE DISTRICT COURT

BY:

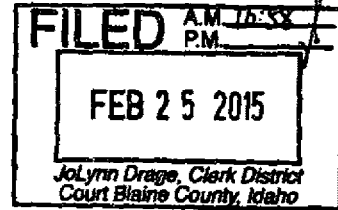
Crystal Rigby

Deputy Clerk

MEMORANDUM DECISION ON MOTION TO STAY PROCEEDINGS ON PETITION FOR STAY AND
MOTION TO EXPEDITE

3 of 3

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Attorney for Appellant Sharon R. Hammer

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff-Appellant,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants- Respondents.

Case No. CV-2012-479

NOTICE OF APPEAL

**TO: THE ABOVE NAMED RESPONDENTS, THE CITY OF SUN VALLEY, IDAHO,
NILS RIBI and DeWAYNE BRISCOE; NOTICE IS HEREBY GIVEN THAT:**

NOTICE TO THE DISTRICT COURT AND RESPONDENTS: On January 30, 2015, Appellant filed her Motion For Reconsideration Of Entry Of Summary Judgment, a Memorandum In Support and Affidavits In Support, within fourteen (14) days of the entry of final judgment, as is allowed pursuant to I.R.C.P. 11(a)(2)(B). Pursuant to I.A.R 14 (a), as the Motion For Reconsideration Of Entry Of Summary Judgment, if granted, could affect findings of fact, conclusions of law or the judgment entered herein, the forty two (42) day period for filing a Notice Of Appeal is terminated, pending resolution of the Motion For Reconsideration Of Entry Of Summary Judgment. However, to ensure that the Appellant has timely filed her Notice Of Appeal herein, the Appellant is filing the Notice Of Appeal herein, subject to possible amendment or reversal of the findings of the District Court related its Memorandum Decision On Motions For Summary Judgment.

1. The above-named Appellant, SHARON R. HAMMER, appeals against the above-named Respondents to the Idaho Supreme Court from a) the Memorandum Decision On Motion For Summary Judgment entered on January 9, 2015 and filed on January 12, 2015 (Exhibit A); b) the

Memorandum Decision Granting Defendants Motion To Dismiss entered on November 22, 2013 and filed on November 26, 2013 (Exhibit B); and, c) the Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel entered on January 17, 2014 and filed on January 17, 2014 (Exhibit C); in the above-entitled action, the Honorable Judge Jonathan Brody, presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the Orders described in paragraph 1 above are appealable Orders under and pursuant to Idaho Appellate Rule 11(a)(1).

3. Appellant requests a review of the following issues:

(a) Did the District Court err as a matter of law by entering summary judgment against the Appellant, and in particular in finding that the Appellant had waived any rights to proceed against the Respondents pursuant to the provisions of the Idaho Protection Of Public Employees Act (*Idaho Statute 6-2010 et seq.*) (the "IPPEA") by the submission to Sun Valley of a Supplemental Release on January 23, 2012 in order to receive contractual "severance" benefits as were described in the City Administrator Employment Agreement the Appellant entered into with the Defendant City Of Sun Valley on or about June 1, 2008?

(b) Did the District Court err as a matter of law in entering summary judgment against the Appellant by finding that judicial estoppel barred the Appellant from raising any claims against the Respondents under the provisions of the IPPEA?

(c) Did the District Court err as a matter of law that personal liability does not attach to Defendants Ribi or Briscoe pursuant to the provisions of the IPPEA?

(d) Did the District Court err as a matter of law that Defendant Sun Valley and subpoena respondent Patricia Latham-Ball possessed attorney-client or work product privilege protections related to a disciplinary investigation performed by Patricia Latham-Ball in November

and December of 2011, and various reports issued by Patricia Latham-Ball which were subsequently released to the public.

4. No order has been entered sealing all or any portion of the record. However, the Respondents filed documents of an unknown quantity with the Court under seal, which are subject to the appeal request herein

5. The Appellant will not be requesting any transcripts in the matter, as there were no evidential hearings held in the matter.

6. Appellant requests the following documents to be included in the clerk's record:

The standard record as is required by I.A.R. 28. The Appellant shall file an Amended Notice Of Appeal detailing any additional documents to be included in the clerk's record upon final findings of the District Court related to the pending Motion For Reconsideration Of Entry Of Summary Judgment.

7. I certify:

(a) That no request for any transcripts has been, or will be, made as there was no testimonial evidence in the matter as all matters were ruled upon based on briefs, affidavits and oral argument.

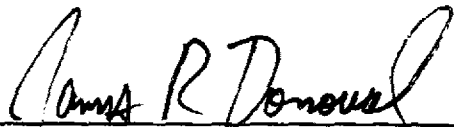
(b) That no fee was required in regards to the preparation of any reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record is unnecessary until the Motion For Reconsideration Of Entry Of Summary Judgment has been ruled upon and a final request for the clerk's record is made. However, should the clerk require an estimated payment at the time of filing, such payment has been made.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 25TH day of February, 2015.

By 
JAMES R. DONOVAL
Attorney For Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25TH day of February, 2015, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan Naylor
Naylor & Hales
950 W. Bannock St., Suite 610
Boise, ID 83702
Counsel for Respondent

☒ U.S. Mail
☐ Fax:
☐ Overnight Delivery
☐ Messenger Delivery
☐ Email:

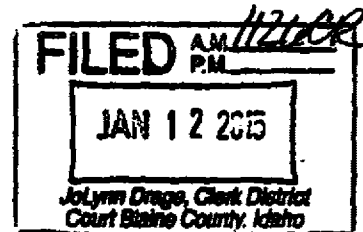
Eric Swartz
Jones & Swartz
PO Box 7808
Boise, ID 83707
Counsel for Appellant

☒ U.S. Mail
☐ Fax:
☐ Overnight Delivery
☐ Messenger Delivery
☐ Email:



JAMES R. DONOVAL

EXHIBIT A



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBE;
and DeWAYNE BRISCO,

Defendant.

Case No. CV-2012-479

**MEMORANDUM DECISION
ON MOTIONS FOR
SUMMARY JUDGMENT**

BACKGROUND

On December 16, 2014, the Court heard the parties' arguments on cross motions for summary judgment with respect to the defendant's fifth and sixth affirmative defenses.

Defendant's motion also included a request for summary judgment, asserting that plaintiff's allegations do not fall under Idaho's Protection of Public Employees Act (IPPEA), and in the

event they did, possible remedies would be limited beyond what plaintiff requests. The Court ultimately took the motions under advisement.

This case began when plaintiff, Sharon Hammer, filed suit against defendant, City of Sun Valley, for damages under Idaho's Protection of Public Employees Act (IPPEA). The plaintiff contends that she was terminated from her employment with the City of Sun Valley on January 19, 2012 based on the fact that she had reported a city council member's conduct of harassing her. During the same time period, allegations were also made that plaintiff had engaged in inappropriate conduct with respect to the city's management. Plaintiff was placed on administrative leave while an investigation was conducted. Upon conclusion of the investigation no charges were brought, and plaintiff resumed her duties. However, shortly after a new mayor came into office early January 2012, the mayor and city council unanimously decided to terminate plaintiff's employment. Plaintiff was terminated under the "without cause" provision of her employment contract. Pursuant to the "without cause" provision, plaintiff, with her attorney's assistance, drafted and signed a supplemental release of claims in order to secure a severance package. The signed supplemental release reads:

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.

Section 3.A. of plaintiff's employment contract, which was referenced in plaintiff's release of claims states:

Employer, acting through the Mayor, may terminate Employee's employment, without case, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum

cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

Plaintiff received a severance package and subsequently filed suit against the City of Sun Valley for violation of the Idaho Protection of Public Employees Act (IPPEA). Both parties filed motions for summary judgment in this case regarding defendant Sun Valley's affirmative defenses of waiver and release. Specifically, in its response to plaintiff Sharon Hammer's complaint under the IPPEA, defendant asserts that plaintiff cannot bring suit against Sun Valley because plaintiff had released the city from liability for any and all claims she might have had at the time she was terminated from city employment. Defendant's fifth and sixth affirmative defenses state that "some or all of the Plaintiff's claims are barred by release . . . [or] waiver." Conversely, plaintiff argues that Section 3.A. of her employment contract is unenforceable because it constitutes a prospective waiver and that the supplemental release pertains only to contract and wage claims surrounding severance payment itself and that there was no consideration for the signed release.

Lastly, plaintiff disputes defendant's assertion that, upon plaintiff's termination, the parties simply went their separate ways. It is alleged that the City of Sun Valley or employees thereof conducted a "smear campaign" against plaintiff that has caused her damage. Due to defendant's conduct after plaintiff's termination, plaintiff asserts that even if there were consideration for the supplemental release, it would be insufficient consideration.

ANALYSIS AND DISCUSSION

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c); *Scona, Inc. v. Green Willow Trust*, 133 Idaho 283, 286, 985 P.2d 1145, 1148 (1999). The court must liberally construe all disputed facts in favor of the non-moving party, and draw all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. *Wiemer v. Rankin*, 117 Idaho 566, 570, 790 P.2d 347, 351 (1990). If conflicting inferences are possible, summary judgment should be denied. Only if there is no genuine issue of material fact after the affidavits, pleadings, and depositions have been construed in the light most favorable to the non-moving party should summary judgment be awarded. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

This Court finds that no genuine issue of material fact exists in this case because plaintiff's signed supplemental release of claims together with Section 3.A. of her employment agreement present a clear and unambiguous contract. When a contract is clear on its face, there is no need to go outside the four corners of the document. *State v. Gomez*, 153 Idaho 253, 257, 281 P.3d 90, 94 (2012) ("If the language of the document is unambiguous, given its ordinary and well-understood meaning, we will not look beyond the four corners of the agreement to determine the intent of the parties."). When dealing with extrinsic evidence such as intent, the parol evidence rule pronounces, "[i]f the written agreement is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the contract." *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 597 (2001) (quoting

Chambers v. Thomas, 123 Idaho 69, 72, 844 P.2d 698, 701 (1992)). In this case, plaintiff's supplemental release clearly absolves defendant of any liability for claims plaintiff had at the time of her termination. The release operates to "release the City of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement." When looking to Section 3.A. of plaintiff's employment agreement, it unambiguously provides that "severance payment herein is intended to be Employee's sole exclusive remedy for *any and all claims* for damages of any kind arising from a termination without cause." It also goes on to say that "[c]onsequently, receipt of the severance payment is subject to a release of *all claims* against the City of Sun Valley." (emphasis added). Plaintiff argues that Section 3.A. is void as against public policy because it creates a prospective waiver. Although prospective waivers are generally unenforceable, *see E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 616 (9th Cir. 1988), in this case, plaintiff signed a supplemental release after the time she knew of her potential claims against defendant. As defendant correctly points out, there is "nothing to indicate how such a release would violate public policy and, indeed, . . . it makes no sense to forbid the resolution of existing claims." Sun Valley's Opposition to Plaintiff's Motion for Summary Judgment - 4.

While plaintiff asserts that she never intended to release any non-contract claims, the Court declines to consider the parties' subjective intent, where the contract is clear. Even if the Court were to look to the parties' subjective intent outside the four corners of the documents—the supplemental release and Section 3.A. of the employment agreement—the release would be interpreted in favor of defendant. Restatement (Second) of Contracts § 201(2) states:

(2) Where the parties have attached different meanings to a promise or agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made

(a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or

(b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.

Restatement (Second) of Contracts § 201 (1981); *see also Johnston v. C.I.R.*, 461 F.3d 1162, 1165 (9th Cir. 2006) (The Court relied on § 201 in determining that “where one party has no reason to know of any other meaning than that apparent from the other party’s own words, and the other party did have reason to know the meaning the first party would attach to his words, the first party’s understanding prevails.”).

In this case, plaintiff knew defendant’s interpretation of the signed release’s language.

Plaintiff asserts in her sworn affidavit that:

18. . . . In order to secure my immediate financial security, I was forced to sign a release of claims that was *acceptable to the City*.

19. The language of the Supplemental Release *purposely and intentionally* does not include any mention that I was releasing any non-contract severance benefits.

20. The Supplemental Release *purposely* does not include any waiver or release of any federal statutory claim, any constitutional claim, or any other common law or tort claims that I may have against Sun Valley, its officials or employees.

21. By signing the Supplemental Release I did not intend to, nor did I knowingly or voluntarily waive or release any non-contract claims, such as any claims arising from the IPPEA.

Affidavit of Sharon R. Hammer in Support of Plaintiff’s Motion for Summary Judgment

(emphasis added). Through correspondence with the plaintiff, defendant made clear what kind of release was acceptable. Based on plaintiff’s affidavit, the Court finds that she knew or had reason to know that defendant believed the supplemental release pertained to any and all claims, not wage and contract claims only. The contract indicates the supplemental release would apply to *all claims*. At the hearing, plaintiff distinguished between “any” and “all,” but Section 3.A. uses both “any and all” and “all claims” in its language. The language in Section 3.A. is not

ambiguous. But if it is, defendant clearly wanted a release of all claims, and plaintiff knew that. Paragraph 18 of her affidavit indicates she knew what was acceptable to defendant. Defendant also submitted an affidavit from Mayor Willich to support the proposition that a release of non-contract claims was not contemplated. However, the affidavit indicates that he did not discuss the types of claims contemplated in Section 3.A. It is clear that what was intended in 2008 was a release of all claims, based on the plain language of Section 3.A.

Additionally, plaintiff argues that the signed supplemental release in exchange for a severance package lacks consideration because severance payments are in reality wages that have already been earned. Plaintiff relies heavily on *Sarbacher v. AmeriCold Realty Trust*, No. 1:10-CV-429-BLW, 2011 WL 5520442 (D. Idaho Nov. 14, 2011) for the proposition that severance payments constitute wages. However, although that case is unreported and thus non-authoritative, it is distinguishable anyway in that it dealt with an employment contract that provided for a severance package with no strings attached. See *id* at *6-*7. Here, on the other hand, plaintiff's employment agreement provides for a severance package only conditionally. Plaintiff was not entitled to severance payment upon termination alone. This case is more comparable to *Moore v. Omnicare, Inc.*, 141 Idaho 809, 118 P.3d 141 (2005), where the Court determined that liquidated damages for an employee's termination "without cause" were not considered "wages" already earned. Therefore, plaintiff's severance package was not equivalent to wages but instead served as consideration for her signed supplemental release. This case also does not involve a situation to recover unpaid wages. Here, the severance package was paid; Sun Valley was, by paying the claim, giving up any chance it had to say the firing was for cause to avoid payment of the severance package.

Lastly, plaintiff argues that although she was terminated under the "without cause" provision of her employment agreement, she was in reality terminated "for cause" due to criminal allegations against her. While there might have been genuine issues of fact concerning whether plaintiff was terminated "for cause," she accepted, and impliedly asserted, that she was terminated "without cause" when she elected to receive a severance package. Under her employment contract, plaintiff was to receive a severance package only if terminated "without cause," and even then, only if she signed a supplemental release. Because plaintiff made the choice to accept the severance package, acknowledging that she was terminated "without cause," she is now judicially estopped from making the argument that she was actually terminated "for cause."

Judicial estoppel is appropriate to prevent "a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." *A & J Const. Co. v. Wood*, 141 Idaho 682, 684, 116 P.3d 12, 14 (2005) (citing *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492, 502 (2004)). "Judicial estoppel is intended to prevent a litigant from playing fast and loose with the courts." *Id.* (citing *McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997)). Indeed, "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." *Heinze v. Bauer*, 145 Idaho 232, 178 P.3d 597 (2008) (quoting *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001)). Judicial estoppel assists courts in maintaining "the dignity of the judicial process, it is an equitable doctrine invoked by a court at its discretion." *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 600 (9th Cir. 1996) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990), *cert. denied*, 501 U.S. 1260, 111 S.Ct. 2915, 115 L.Ed.2d 1078 (1991)). Therefore, in the exercise of discretion, this Court applies the equitable

doctrine of judicial estoppel and refuses to consider whether plaintiff was actually terminated "for cause." Plaintiff accepted a substantial benefit based on the fact that she was supposedly terminated "without cause," and this Court declines to allow her to now assume an inconsistent position. Judicial estoppel does not operate in situations where there is coercion or duress. Plaintiff was in a difficult and stressful situation, but she did not suffer duress or coercion; her affidavit indicates she was clearly thinking strategically.

Because defendant's affirmative defense of release clearly and unambiguously applies to any and all claims, plaintiff is barred from bringing her IPPEA suit against defendant. Thus, no genuine issues of material fact need be litigated, and the case must thereby be dismissed. Had there not been a release and the payment of a severance package, there are factual disputes that probably would prevent summary judgment. However, the supplemental release makes the merits of the case moot. Defendant's other reasons for requesting summary judgment need not be addressed, as the signed supplemental release is dispositive in this case. Any claims plaintiff may have that arose after her termination present separate issues and are pending in federal court now or subject to future suits as the case may be.

CONCLUSION

WHEREFORE, this Court hereby orders that plaintiff's motion for summary judgment is **DENIED** and defendant's motion for summary judgment is **GRANTED**.

Dated: January 9, 2015

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Clement Ruby Deputy Clerk for the County of Blaine, do hereby certify that on the 12 day of Jan., 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION ON MOTIONS FOR SUMMARY JUDGMENT to each of the persons as listed below:

Eric Swartz
Naylor & Hales, P.C.
950 W. Bannock Street, Ste. 610
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
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Kirtlan Naylor
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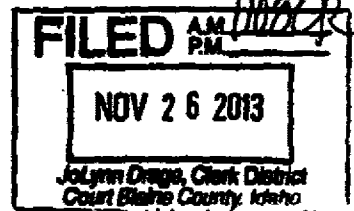
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DATED 1/12/2015
CLERK OF THE DISTRICT COURT

BY: C Ruby

Deputy Clerk

EXHIBIT B



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2013-479
2012

**MEMORANDUM DECISION
GRANTING DEFENDANTS
MOTION TO DISMISS**

BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendants, the City of Sun Valley, Nils Ribi, and DeWayne Briscoe. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendants for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA"). The Plaintiff has claims against the City of Sun Valley, as well as Mr. Briscoe, and Mr. Ribi, in their individual capacities.

The Defendants filed a Motion to Dismiss on September 19th, 2013, seeking to dismiss the claims against Mr. Briscoe and Mr. Ribi. The Defendants argue that both Mr. Briscoe and Mr. Ribi are elected officials, or agents, of the City of Sun Valley, and therefore are not individually liable for a cause of action brought under I.C. § 6-2101, the IPPEA. Pursuant to that argument, the Defendants seek to dismiss the claim against Mr. Briscoe and Mr. Ribi for failure to state a legal claim. The Plaintiff counters, stating that both Mr. Briscoe and Mr. Ribi can be individually sued though the IPPEA, and that the statutory intent of the IPPEA does not comport with limiting an injured plaintiff's ability to bring a cause of action against such individuals.

The Motion to Dismiss was argued before this Court on October 1, 2013, with this Court taking the matter under advisement.

MOTION TO DISMISS STANDARD

The standard for reviewing a 12(b)(6) Motion for Dismissal of a complaint is "A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated." *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002).

When reviewing a motion to dismiss pursuant to I.R.C.P. 12(b)(6), the non-moving party is entitled to have all inferences viewed in his favor. *Id.* at 104 citing *Orthman v. Idaho Power Co.*, 126 Idaho 960, 961, 895 P.2d 561, 562 (1995). After drawing all inferences in the non-moving party's favor, this Court must find whether a claim for relief has been stated. *Id.* "The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *Id.* This Court must "examine whether Plaintiffs have sufficiently alleged the requisite elements of standing in their complaint to survive a 12(b)(6) motion to dismiss." *Id.* "Where a claim for relief is stated, the complaint survives the motion to dismiss and the plaintiff is entitled to offer evidence in support of its claim." *Indep. Sch. Dist. of Boise City v. Harris Family Ltd. P'ship*, 150 Idaho 583, 587, 249 P.3d 382, 386 (2011) citing *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

DISCUSSION & ANALYSIS

"A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated." *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). The issue presented before this Court is whether the Plaintiff stated a claim for relief.

To resolve the issue presented to this Court, it must be determined whether Mr. Ribí and Mr. Briscoe are considered employers as defined by I.C. §6-2103(4)(b). The IPPEA provides a cause of action "for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation." I.C. §6-2101. "Employer means the state of Idaho, or any political subdivision or governmental entity eligible to participate in the public employees

retirement system..." I.C. §6-2103(4)(a). Furthermore, an "[e]mployer" includes an agent of an employer," I.C. §6-2103(4)(b), with no provision of the statute specifically exposing an agent of an employer to any individual liability. Statutory interpretation is necessary to determine whether Mr. Ribí and Mr. Briscoe fall into the definition of employer, as defined by the IPPEA.

When determining the meaning of words in a statute this Court is instructed to consider "(1) [t]he language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent." I.C. § 73-113. Where the meaning of a statute and the words within it are clear, this Court is confined to follow that meaning and may neither add to nor take away by judicial construction. *Credit Bureau of Lewiston-Clarkston, Inc. v. Idaho First Nat. Bank*, 117 Idaho 29, 784 P.2d 885 (1989). The plain meaning of a statute will prevail unless following such a meaning would lead to an absurd result. *Gibson v. Bennett*, 108 P.3d 417, 141 Idaho 270 (2005). Furthermore, unambiguous language in a statute must fully interpreted by its plain meaning by courts applying the statute unless clearly expressed legislative intent is contrary. *Kenneth F. White, Chld. v. St. Alphonsus Regional Medical Center*, 31 P.3d 926, 136 Idaho 238 (2001) review denied. Where words are used in a statute that have a well-known meaning at common law, they are presumed to have been used in that sense. *State v. Schulz*, 151 Idaho 863, 867 (2011), *See State v. Oar*, 129 Idaho 337, 340, 924 P.2d 599, 602 (1996) (quoting *Lorillard v. Pons*, 434 U.S. 575, 583, 98 S.Ct. 866, 871, 55 L.Ed.2d 40, 47 (1978)).

Here, this Court must determine whether an IPPEA action can be filed against individuals who are elected officials and make decisions for a government employer. An IPPEA claim is purely statutory. *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 558, 212 P.3d 982, 988 (2009). It is purely a statutory claim against government employers. *Id.* Although, this holding in *Portneuf* is clear, that case did not directly address the question presented here. Nevertheless, looking at the structure and context of the IPPEA, a claim may be brought against a political subdivision or governmental entity, but not against an individual agent or member of that entity.

The question is whether I.C. § 6-2103(4)(b) creates individual liability. Defendants essentially concede that Mr. Ribí and Mr. Briscoe are agents and thus fall under the agency analysis (and therefore subject the City of Sun Valley to potential liability), but argue that they are not subject to individual liability as they are not employers themselves. The IPPEA specifically includes the agents of employers into the definition of “employer”, when it stated “[e]mployer” includes an agent of an employer.” I.C. §6-2103(4)(b). “Include,” from the Latin *Includere*, meaning “to shut in, keep within,” means “to confine within, hold as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used. ‘Including’ within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation.” *Black’s Law Dictionary* 763 (6th ed. 2009) citing *Premier Products Co. v. Cameron*, 240 Or. 123, 400 P.2d 227,228 (1965). The primary definition of “include” is of limitation; it is not primarily a conjunctive word,

although it can be. The word can mean two different things, which highlights the problem here.

While no Idaho case law is directly on point, numerous courts around the country, when analyzing similar statutes, have come to the conclusion that the “agent” language is only intended to hold employers liable and not supervisory employees, most citing *respondeat superior* liability as the reason for the inclusion of the word “agent.” *see Wathen v. General Electric Co.*, 115 F.3d 400, 406 (6th Cir. 1997); *Obst v. Microtron, Inc.*, 588 N.W.2d 550, 553-554 (Minn. Ct. App. 1999); *Reno v. Baird*, 957 P.2d 1333, 1337 (Cal. 1998) citing *Tomka v. Sellar Corp.*, 66 F.3d 1295, 1313-1314, (2d Cir.1995), *Lenhardt v. Basic Institute of Technology, Inc.*, 55 F.3d 377 (8th Cir.1995), *U.S. E.E.O.C. v. AIC Security Investigations, Ltd.*, 55 F.3d 1276 (7th Cir.1995). These cases suggest a hypertechnical reading of the statute does imply personal liability. That is the situation here, in that a technical reading or expansive definition of “includes” suggests individual liability. However, a traditional meaning of “include” and the context of the statute means that the above cases are correct.

The statutory remedies do not support individual liability. IPPEA, I.C. § 6-2106, provides “any or all” of the following relief for employees: “(1) An injunction to restrain continued violation of the provisions of this act; (2) The reinstatement of the employee to the same position held before the adverse action, or to an equivalent position; (3) The reinstatement of full fringe benefits and seniority rights; (4) The compensation for lost wages, benefits and other remuneration; (5) The payment by the employer of reasonable costs and attorneys’ fees; (6) An assessment of a civil fine of not more than five hundred dollars (\$500), which shall be submitted to the state treasurer for deposit in the general

fund.” Only the State of Idaho, or another governmental entity, not an individual, could provide much of the relief prescribed by the statute, further illustrating that the Idaho legislature did not intend to have supervisory employees be part of the definition of “employer.” An individual council member or commissioner could not individually take action to reinstate an employee or provide benefits.

There is a provision in the statute which has created additional ambiguity. I.C. § 6-2105(3) is the venue provision of the statute. It states, “[a]n action begun under this section may be brought in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.” I.C. § 6-2105(3). This suggests that an action could be filed against an individual. There are several problems with this, however. The first and second are the stated legislative intent codified in 6-2101, and the holding in *Van v. Portneuf*.

The third problem is that the remedies in the statute do not suggest individual liability. I.C. § 6-2104 sets forth the ways the chapter may be violated. It can only be violated by employers, not individuals engaging in particular conduct, unless a strained interpretation is used.

This is not to say there are no other possible causes of action for alleged conduct of individuals, but there is not an IPPEA claim. It can be dangerous for courts to overlook or ignore parts of a statute, but here the codified legislative intent, case law, and other parts of the statute lead to the conclusion that an individual cannot be sued notwithstanding 6-2105(3).

Taking all inferences in the non-moving party's favor, and looking only to the pleadings, a claim for relief has not been stated as to the claims brought against Mr. Ribí and Mr. Briscoe. Mr. Ribí and Mr. Briscoe in their individual capacities are not employers under the definition of the IPPEA. Therefore, the Plaintiff cannot bring a cause of action against them using the IPPEA.

The Defendants seek sanctions pursuant to I.R.C.P 11. The issue presented is fairly arguable and not so clear under Idaho law that sanctions are warranted. Rule 11 is a court management tool to be applied narrowly. This Court finds that sanctions are not warranted.

CONCLUSION

For the foregoing reasons, the Defendants Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED

Dated: 11/22/2013

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 26 day of Nov., 2013, I filed the original and caused to be served a true and correct copy of the above and foregoing document: **MEMORANDUM DECISION GRANTING DEFENDANTS MOTION TO DISMISS** to each of the persons as listed below:

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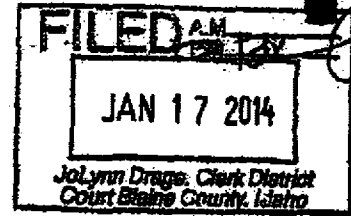
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CLERK OF THE DISTRICT COURT

BY: CR Rigby
Crystal Rigby
Deputy Clerk

EXHIBIT C



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV 2012-479

**MEMORANDUM DECISION DENYING PLAINTIFF'S MOTION TO ENFORCE
SUBPOENA AND COMPEL**

Sharon Hammer ("Plaintiff") brought a Motion to Enforce Subpoena against non-party Patricia Ball and to compel production of documents withheld from production in discovery and

**MEMORANDUM DECISION DENYING MOTION TO ENFORCE SUBPOENA AND
COMPEL**

in response to subpoena. Ms. Ball and the Defendants, City of Sun Valley ("Sun Valley") are opposing the Motion claiming that attorney-client privilege and attorney work product protections apply. Oral argument was heard on this matter on December 17, 2013. Because this Court finds that the materials sought in the subpoena are protected by the work product doctrine, the Plaintiff's Motion is denied.

FACTS AND BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendant, the City of Sun Valley. The dispute is centered on the Plaintiff's treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendant for retaliatory discharge in violation of the Idaho Protection of Public Employees Act ("IPPEA").

This Motion raises similar issues to this Court's decision in the Non-party City of Sun Valley's Motion to Quash Subpoena in the *Ribi v. Donoval*, in Blaine County Case No. CV-2011-1040. There, this Court quashed a subpoena seeking Ms. Ball's investigation material and the communications that coincided with the investigation into the Plaintiff's activities as an employee for the City of Sun Valley, finding that the requested information was work product. Here, the Plaintiff has presented additional affidavits that contradict some of the findings in this Court's *Memorandum Decision Granting Non-Party City of Sun Valley's Motion to Quash Subpoena*.

Facts similar to the above mentioned subpoena are presented here. On November 10, 2011, following allegations of improper misuse of public funds and equipment by the Plaintiff, Sun Valley conducted a special executive City Council session on November 11, 2011, to evaluate the allegations. On or about November 12, 2011, the Plaintiff's then-attorney, James R. Donoval, sent Mr. Wayne Willich, then Sun Valley mayor, a letter with intention to pursue

litigation against Sun Valley and other officials in connection with Plaintiff's allegations of harassment and the City's potential disciplinary action against her. Similar letters were also sent by Mr. Donoval on November 15 and 16, 2011, following another special executive session on November 14, 2011. There were three letters sent by Mr. Donoval to the mayor and members of the Sun Valley City Council between November 12, 2011 and November 17, 2011. All three of these letters either explicitly or implicitly threatened litigation against Sun Valley or members of its government. On November 21, 2011, Mr. Donoval, on behalf of Sharon Hammer, filed a lawsuit against Sun Valley and members of its government in Idaho's Fifth District Court, Blaine County.

On November 17, 2011, Adam King, the Sun Valley City Attorney, contacted Ms. Ball about the possibility of retaining her services for a fact-finding investigation regarding various allegations that could be the subject of litigation. On November 21, 2011, Sun Valley retained Ms. Ball for the purpose of conducting an investigation into alleged violations of City policy. On November 22, 2011, Kirtlan Naylor was assigned by Sun Valley's insurance carrier to provide legal defense to Sun Valley, and Mr. Naylor was to appointed as Ms. Ball's primary legal contact on November 28, 2011. The scope of Ms. Ball's investigation included allegations concerning violations of city policy made against Ms. Hammer, as well as allegations made by Ms. Hammer against Nils Ribi in her November 21, 2011 lawsuit. On November 30, 2011, Ms. Ball was informed that the scope of the investigation was to be expanded into additional allegations. In conducting this investigation, Ms. Ball interviewed witnesses, reviewed information, and drafted a report. Ms. Ball completed the factual basis of her report on December 9, 2011, and presented a draft of the report to Mr. Willich, Mr. Briscoe, the City Council, Mr. King and Mr. Naylor on December 12, 2011. Following corrections, the report was concluded on December 20, 2011 by

Sun Valley; however the Plaintiff asserts that the investigation was completed on December 12, 2011. Portions of this report were later provided to the Blaine County Prosecutor for review as to any criminal conduct.

On May 6, 2013, the Plaintiff issued a subpoena to Ms. Ball seeking to produce all audio tapes of interviews, documents, communications, agreements, and reports obtained or produced in connection with Ms. Ball's investigation for Sun Valley, also referred to as the Hammer Disciplinary Investigation. Ms. Ball informed Sun Valley of the subpoena, and Sun Valley responded to the subpoena on June 24, 2013 and provided what they considered non-privileged documents and lodged objections as to privileged information. Plaintiff then began attempts to meet and confer to seek production of those privileged documents. On November 1st, 2013, Plaintiff filed the Motion to Enforce Subpoena.

LEGAL STANDARD

I.R.C.P. 26(b)(1) permits broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is "reasonably calculated to lead to the discovery of admissible evidence." I.R.C.P. 26(b)(1). The burden of showing information is privileged, and therefore exempt from discovery, is on the party asserting the privilege. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04, 116 P.3d 27, 33-34 (2005) citing *Ex parte Niday*, 15 Idaho 559, 98 P. 845 (1908). I.R.E. 502(b) states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyer's representatives, in any combination, concerning a matter of common

interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client". I.R.E. 502(b). A communication is confidential where it is not intended to be disclosed to third parties, other than those third parties who are furthering the rendition of professional legal services to the client or who are necessary to transmit the confidential communication. I.R.E. 502(a)(5).

Furthermore, work product is generally immune from discovery. *See* I.R.C.P. 26(b)(3). Work product is considered "documents and tangible things otherwise discoverable... prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent)..." *Id.* Work product can only become discoverable "upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.* Additionally, "[i]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation, including communications between the attorney and client, whether written or oral." *Id.*

DISCUSSION

Sun Valley argues that the Motion to enforce the Plaintiff's subpoena should be denied because the subpoena seeks protected work product and material protected by the attorney-client

privilege. The Plaintiff argues that the material sought is not protected by the attorney-client privilege and should not be considered work product.

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation "by or for another party or by or for that other party's representative...only upon a showing that the party seeking discovery has substantial need of the materials...and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." I.R.C.P. 26(b)(3). If discovery of such material is ordered, "the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

There is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. Aff. Ball, ¶ 5; Aff. King, ¶ 14. Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation. Aff. King, Ex. A, p. 5, Aff. King, ¶ 15, Aff. Ball, ¶ 5,7. Therefore, Ms. Ball's report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation. There have been new affidavits produced that create inconsistencies as to when the investigation was completed. This Court's previous finding is that the investigation was completed on December 20th, 2011. Plaintiff now argues, and relies on Mr. Willich's new affidavits, that by December 12, 2011, Ms. Ball's investigation and work was complete, and that anything beyond this point was no longer authorized work product. However, there is not enough evidence that shows that this Court's previous finding that the investigation was completed on December 20th, 2011, was incorrect. In fact, e-mail communications provided *in camera*

contradict Mr. Willich's assertion that he gave Ms. Ball no authority or direction to modify the "Final Ball Report" in any manner after December 12, 2011. K. Naylor Aff., Ex. B, SV IN CAMERA 57; Ex. L, ¶ 14. Furthermore, Plaintiff's affidavit states that Mr. Willich stated to her on December 16, 2011, "that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days." Aff. K. Naylor, Ex. G, ¶ 5. This further shows that Mr. Willich did not see the investigation as complete on December 12, 2011. This Court continues to find that for the purposes of this motion, Ms. Ball's investigation was complete on December 20, 2011.

Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party's representative.

The work product doctrine protects disclosure of communications. *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). "Communications" are precisely what the Plaintiff seeks in the subpoena, essentially all documents generated in connection with Ms. Ball's disciplinary investigation. The Plaintiff is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. However, the Plaintiff is not entitled to copies, however recorded, of Ms. Ball's interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball's duty as an investigator. Furthermore, the Plaintiff is not entitled to the e-mails produced in accordance with the investigation. The Plaintiff can obtain the underlying facts obtained by Ms.

Ball in these interviews through other discovery methods. Notably, the report itself became publically available and Plaintiff has it.

It is possible under certain circumstances to waive the work product doctrine. If work product is disclosed, and that disclosure is to an adversary, the protection is lost. *Trustees of Elec. Workers No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1, 14-15 (D.C. Cir. 2010) (citations omitted). In this case, part of Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries. See *U.S. v. AT&T*, 642 F.2d 1285, 1300 (D.C. Cir. 1980) (MCI's disclosure of work product to the government, for the purpose of aiding in the investigation of MCI's opponent did not waive work product immunity). "While the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself [to waive protection of work product]." *Id.* at 1299. Since there has been no showing that Sun Valley disclosed its work product to an adversary, it has not waived protection of its work product.

Moreover, the Plaintiff has not shown that Sun Valley has waived work product protection. The Plaintiff argues that Sun Valley has waived its attorney-client and work product privilege. While there is no direct Idaho case law on the issue, the Plaintiff cites to federal case law which analyzes a similar work product rule. Under the federal rule, work product protection is only waived when fairness requires, and is limited to the subject matter of the related disclosure, and does not create a blanket waiver of the work product privilege in the entire case. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100-01 (9th Cir. 2010). "[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other

such communications on the same subject.” *Weil v. Investment Indicators, Research & Mgmt., Inc.*, 647 F. 2d 12, 23 (9th Cir. 1981). The Plaintiff attempts to argue that the voluntary waiver of a single document waives all communications presented in a case. However, this is not the case. Even a case cited by the Plaintiff states “[w]e conclude, then, that while the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself for waiver of the work product privilege.” *Permian Corp. v. United States*, 665 F.2d 1214, 1219 (D.C. Cir. 1981) citing *United States v. AT&T*, 642 F.2d 1285, 1299 (D.C.Cir.1980). Because Ms. Ball’s findings were disclosed to the Blaine County Prosecutor does not mean that waiver should be applied to all of Ms. Ball’s other communications. Furthermore, there has been no evidence produced by the Plaintiff that the Defendant has voluntarily disclosed any attorney-client communications between Mr. King and Mr. Naylor nor any of the work product currently not being disclosed. Therefore, the privileges remain. Lastly, Plaintiff’s argument that Mr. Naylor and Mr. King we unauthorized to participate in Ms. Ball’s investigation is not supported by the evidence in the record.

The Plaintiff has not shown that she cannot obtain the underlying facts through depositions, interrogatories, requests for production, or other discovery methods, nor has the Plaintiff shown either a substantial need for Ms. Ball’s materials, nor an undue hardship in attaining the substantial equivalent of these materials by other means, and again, the Plaintiff has the report itself. Because the Plaintiff has not met the burden under I.R.C.P. 26(b)(3), and this Court finds that Ms. Ball was retained in anticipation of litigation, and the materials she prepared were prepared in anticipation of litigation, those materials are protected. Because of this, there is no need to analyze whether those materials are protected from disclosure under the attorney-client privilege.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion to Enforce Subpoena and Compel is hereby DENIED. As to fees and expenses, I.R.C.P. 37(a)(4) may require further argument. Fees and costs are denied without prejudice at this time and the issue will be discussed at the next hearing.

IT IS SO ORDERED

Dated: 1/17/14

Signed: 

Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Minidoka, do hereby certify that on the 22 day of January, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION DENYING PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AND COMPEL to each of the persons as listed below:

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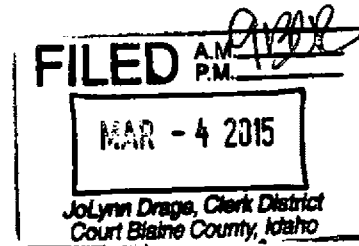
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CLERK OF THE DISTRICT COURT

BY:


Crystal Rigby
Deputy Clerk



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

The Plaintiff,

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

The Defendants.

Case No. CV-2012-479

**ORDER MODIFYING
AUTOMATIC STAY**

On March 3, 2015, the Court heard the motion to withdraw as Plaintiff's counsel in the case. At the hearing, the parties discussed the effect Plaintiff's Notice of Appeal, filed February 25, 2015, would have on this Court's ability to grant the motion to withdraw as counsel. Pursuant to Idaho Appellate Rule 13(a), and upon stipulation of the parties, this Court orders that the fourteen-day automatic stay be modified to allow for a ruling on the motion to withdraw that was pending before the notice of appeal.

Dated: 3/3/15

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Ruby, Deputy Clerk for the County of Blaine, do hereby certify that on the 4 day of March, 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: ORDER MODIFYING AUTOMATIC STAY, to each of the persons as listed below:

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DATED 3/4/2015
CLERK OF THE DISTRICT COURT

BY: 
Deputy Clerk

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Tyler D. Williams [ISB No. 8512]

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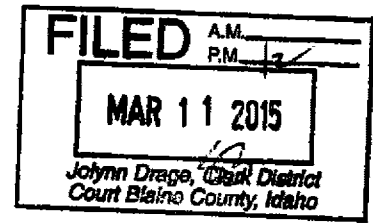
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Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**DEFENDANT-RESPONDENTS'
REQUEST FOR ADDITIONAL
TRANSCRIPTS AND RECORD**

**TO: THE ABOVE-NAMED APPELLANT AND THE PARTY'S ATTORNEY, AND
THE COURT REPORTER AND CLERK OF THE ABOVE-ENTITLED COURT**

NOTICE IS HEREBY GIVEN, that the Defendant-Respondents, in the above-entitled proceeding hereby request pursuant to I.A.R. 19, the inclusion of the following material in the reporter's transcript or the clerk's record in addition to the standard record required to be included by I.A.R. 28 and the notice of appeal. Any additional transcript is to be provided in electronic format.

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 1.**

1. **A copy of the transcript of the following hearings pursuant to I.A.R. 19(b):**
 - A. Hearing date: October 1, 2013
Name of hearing: Hearing on Defendants' Motion to Dismiss
Has a transcript been made? No
Name of reporter: Maureen Newton (208) 679-2534
Estimated number of pages: 1-100 pages
 - B. Hearing date: December 17, 2013
Name of hearing: Hearing on Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena
Has a transcript been made? Yes
Name of reporter: Maureen Newton (208) 679-2534
Actual number of pages: 27 pages
 - C. Hearing date: January 21, 2014
Name of hearing: Hearing on Plaintiff's Motion for Reconsideration of Defendants Ribi and Briscoe's Motion to Dismiss
Has a transcript been made? Yes
Name of reporter: Maureen Newton (208) 679-2534
Actual number of pages: 40 pages
 - D. Hearing date: April 14, 2014
Name of hearing: Hearing on Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena
Has a transcript been made? Yes
Name of reporter: Maureen Newton (208) 679-2534
Actual number of pages: 39 pages
 - E. Hearing date: December 16, 2014
Name of hearing: Hearing on Defendants' Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment
Has a transcript been made? Yes
Name of reporter: Maureen Newton (208) 679-2534
Actual number of pages: 58 pages

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 2.**

2. A copy of the following documents filed with the Clerk of the District Court in this matter pursuant to I.A.R. 19(b):

- A. 9/17/2013 Defendants' Motion to Dismiss
- B. 9/17/2013 Memorandum in Support of Defendants' Motion to Dismiss
- C. 9/17/2013 Affidavit of Kirtlan G. Naylor in Support of Motion to Dismiss
- D. 9/24/2013 Errata to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss
- E. 9/24/2013 Plaintiff's Response in Opposition to Defendants' Motion to Dismiss
- F. 9/27/2013 Reply Memorandum in Support of Defendants' Motion to Dismiss
- G. 11/4/2013 Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena
- H. 11/4/2013 Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena
- I. 11/4/2013 Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Compel
- J. 11/4/2013 Affidavit of Attorney James R. Donoval Related to Motion to Compel
- K. 11/4/2013 Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena
- L. 12/10/2013 Defendant's Opposition To Plaintiff's Motion to Enforce Subpoena

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 3.**

- M. 12/10/2013 Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel. **NOTE TO CLERK: EXHIBITS "A" AND "B" TO THIS AFFIDAVIT WERE FILED *IN CAMERA*, FOR THE JUDGE'S EYES ONLY. THESE EXHIBITS MUST RETAIN THAT *IN CAMERA* STATUS WHEN PRODUCED ON APPEAL, AND MUST NOT BE PROVIDED TO PLAINTIFF'S COUNSEL. EXHIBITS "A" AND "B" SHOULD BE PROVIDED TO THE SUPREME COURT IN SEPARATE ENVELOPES AS PROVIDED TO THE DISTRICT JUDGE. See, attached correspondence to the clerk dated December 10, 2013.**
- N. 12/10/2013 Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss
- O. 12/10/2013 Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss
- P. 12/13/2013 Reply in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena
- Q. 12/13/2013 Supplemental Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena
- R. 12/13/2013 Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion to Compel
- S. 1/6/2014 Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss
- T. 1/14/2014 Defendants' Opposition To Plaintiff's Motion for Reconsideration
- U. 1/31/2014 Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena, Oral Argument Requested

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 4.**

- V. 1/31/2014 Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Reconsider Denial of Motion to Compel
- W. 2/14/2014 Memorandum in Support of Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena
- X. 4/7/2014 Defendant's Opposition to Plaintiff's Motion for Reconsideration
- Y. 11/18/2014 Declaration of Susan Robertson
- Z. 11/18/2014 Memorandum in Support of Sun Valley's Motion for Summary Judgment
- AA. 11/18/2014 Sun Valley's Motion for Summary Judgment
- BB. 11/18/2014 Declaration of Kirtlan G. Naylor
- CC. 11/18/2014 Declaration of Kirtlan G. Naylor- Exhibit F of Exhibit J is Filed under Seal
- DD. 11/18/2014 Plaintiff's Motion for Summary Judgment
- EE. 11/18/2014 Memorandum in Support of Plaintiff's Motion for Summary Judgment
- FF. 11/18/2014 Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment
- GG. 11/18/2014 Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment
- HH. 11/18/2014 Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment
- II. 11/18/2014 Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment
- JJ. 11/21/2014 Corrected Memorandum in support of Sun Valley's motion for summary judgment
- KK. 12/2/2014 Sun Valley's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment
- LL. 12/2/2014 Plaintiff's Response to Sun Valley's Motion for Summary Judgment

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 5.**

- MM. 12/2/2014 Affidavit of Counsel in Support of Plaintiff's Response to Sun Valley's Motion for Summary Judgment
- NN. 12/9/2014 Reply in Support of Plaintiff's Motion for Summary Judgment
- OO. 12/9/2014 Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment
- PP. 12/9/2014 Sun Valley's Reply Memorandum in Support for Summary Judgment

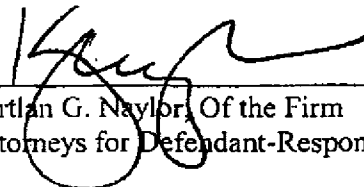
3. Exhibits (civil cases only):

Not applicable.

4. I certify that a copy of this request was served upon the Reporter and Clerk of the District Court and upon all parties required to be served pursuant to Rule 20.

DATED this 11th day of March, 2015.

NAYLOR & HALES, P.C.

By 
Kirtlan G. Naylor, Of the Firm
Attorneys for Defendant-Respondents

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 6.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
4110 Eaton Ave., Ste. D
Caldwell, ID 83607
Plaintiff's Attorney

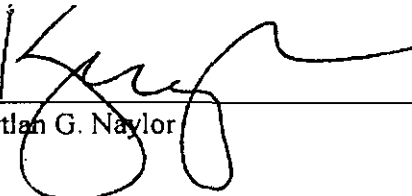
☒ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 649-1603
☐ Email: jdonoval@aol.com

Court Clerk
c/o Judge Brody's Chambers
Minidoka County Court
PO Box 368
Rupert, ID 83350

☒ U.S. Mail

Maureen Newton, Court Reporter
c/o Judge Brody's Chambers
Minidoka County Court
PO Box 368
Rupert, ID 83350

☒ U.S. Mail



Kirtlan G. Naylor

8406_44 IAR 19 Request for Transcript and Documents.wpd

**DEFENDANT-RESPONDENTS' REQUEST FOR
ADDITIONAL TRANSCRIPTS AND RECORD - 7.**

N!
NAYLOR & HALES, P.C.
ATTORNEYS AT LAW

KIRTLAN G. NAYLOR

Direct Line: 947-2070
E-mail: kirt@naylorhales.com

Kirtlan G. Naylor
Roger J. Hales
Bruce J. Castleton
James R. Stoll
Eric F. Nelson
David Sasser
Jacob H. Naylor
Tyler D. Williams
Joan E. Callahan

Of Counsel
Robert G. Hamlin
James D. Carlson

December 10, 2013

Via U.S. Mail and Email: jsutherland@co.minidoka.id.us

Janet Sunderland
715 G Street
PO Box 368
Rupert, ID 83350

Re: Hammer v. City of Sun Valley, et al.
Blaine County Case No: CV-2012-479

Dear Janet:

As a follow up to my email to you on December 10, 2013, enclosed are courtesy copies of the following documents:

1. Defendant's Opposition to Plaintiff's Motion to Enforce Subpoena;
2. Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel;
and
3. Exhibits A-O as referenced in the Affidavit.

Exhibits A and B are being provided to Judge Brody only as they contain attorney-client communications. Thank you.

Sincerely,


Tricia J. Wassmuth

Legal Assistant to Kirtlan G. Naylor

tjw

Enclosures

cc: Clients, w/Enclosures

M:\CRM\Hammer v. Sun Valley\Letters\8406 Ltr Clerk 07_Sunderland.wpd

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AMENDED CERTIFICATE OF SERVICE – 1

TABLE OF CONTENTS

Register of Actions		1
Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel	1/17/2014	15
Order Denying Permissive Appeal	5/8/2014	26
Affidavit of James R. Donoval in Support of Plaintiff's Motion for Reconsideration	1/30/2015	30
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Reconsideration	1/30/2015	84
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Reconsideration	1/30/2015	113
Associated Appearance of Attorney James R. Donoval for Reconsideration of Entry of Summary Judgment Purposes Only	1/30/2015	125
Facts in Support of Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	126
Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	144
Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	174
Sun Valley's Objection to Plaintiff's Motion for Reconsideration of Summary Judgment	5/19/2015	175
Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	5/26/2015	186
Order on Motion to Reconsider Entry of Summary Judgment	6/8/2015	220
Plaintiff's First Request to Supplement the Record on Appeal	6/18/2015	222
Plaintiff's Second Request to Supplement the Record on Appeal	6/18/2015	227
Supplemental Judgment	7/2/2015	231
Stipulation of Parties for Inclusion of Additional Transcripts and Record	7/17/2015	233
Order	7/21/2015	236
Clerk's Certificate		238
Certificate of Service		239

INDEX

Affidavit of James R. Donoval in Support of Plaintiff's Motion for Reconsideration	1/30/2015	30
Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Reconsideration	1/30/2015	84
Affidavit of Wayne Willich in Support of Plaintiff's Motion for Reconsideration	1/30/2015	113
Associated Appearance of Attorney James R. Donoval for Reconsideration of Entry of Summary Judgment Purposes Only	1/30/2015	125
Certificate of Service		239
Clerk's Certificate		238
Facts in Support of Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	126
Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel	1/17/2014	15
Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	144
Motion for Reconsideration of Entry of Summary Judgment	1/30/2015	174
Order	7/21/2015	236
Order Denying Permissive Appeal	5/8/2014	26
Order on Motion to Reconsider Entry of Summary Judgment	6/8/2015	220
Plaintiff's First Request to Supplement the Record on Appeal	6/18/2015	222
Plaintiff's Second Request to Supplement the Record on Appeal	6/18/2015	227
Register of Actions		1
Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	5/26/2015	186
Stipulation of Parties for Inclusion of Additional Transcripts and Record	7/17/2015	233
Sun Valley's Objection to Plaintiff's Motion for Reconsideration of Summary Judgment	5/19/2015	175
Supplemental Judgment	7/2/2015	231

Other Claims

Date		Judge
6/29/2012	New Case Filed - Other Claims	Robert J. Elgee
	Plaintiff: Hammer, Sharon R Appearance Eric B. Swartz	Robert J. Elgee
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Jones & Swartz Receipt number: 0005184 Dated: 6/29/2012 Amount: \$88.00 (Check) For: Hammer, Sharon R (plaintiff)	Robert J. Elgee
	Complaint For Damages and Demand for Jury Trial Filed	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to City of Sun Valley, Idaho; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Nils A Ribi; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Dewayne L Briscoe; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Adam King; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Robert Youngman; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Kelly Rae Ek; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Michelle Frostenson; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Franz Suhadolnik; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Subpoena: Document Service Issued: on 6/29/2012 to Michelle Griffith; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Joan Robertson Lamb; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
	Summons: Document Service Issued: on 6/29/2012 to Wayne Willich; Assigned to Returned to Counsel for Service. Service Fee of \$0.00.	Robert J. Elgee
7/2/2012	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Naylor & Hales, PC Receipt number: 0005260 Dated: 7/2/2012 Amount: \$35.00 (Credit card)	Robert J. Elgee
	Miscellaneous Payment: Technology Cost - CC Paid by: Naylor & Hales, PC Receipt number: 0005260 Dated: 7/2/2012 Amount: \$3.00 (Credit card)	Robert J. Elgee
7/3/2012	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Naylor & Hales PC Receipt number: 0005289 Dated: 7/3/2012 Amount: \$51.00 (Credit card)	Robert J. Elgee
	Miscellaneous Payment: Technology Cost - CC Paid by: Naylor & Hales PC Receipt number: 0005289 Dated: 7/3/2012 Amount: \$3.00 (Credit card)	Robert J. Elgee
7/10/2012	Order of disqualification	Robert J. Elgee
7/12/2012	Order of assignment	Robert J. Elgee

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 2 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribí, Dewayne L Briscoe

Other Claims

Date		Judge
7/12/2012	Change Assigned Judge	Jonathan P. Brody
11/21/2012	Notice Of Service of discovery requests	Jonathan P. Brody
11/29/2012	Notice Of Service of Amended discovery requests	Jonathan P. Brody
12/7/2012	Notice Of Service Of Second Amended Discovery Requests	Jonathan P. Brody
12/20/2012	Acceptance Of Service	Jonathan P. Brody
12/27/2012	Amended Complaint for Damages and Demand for Jury Trial	Jonathan P. Brody
1/2/2013	Notice Of General Appearance for Defendants	Jonathan P. Brody
	Defendant: City of Sun Valley, Idaho Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Defendant: Ribí, Nils A Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Defendant: Briscoe, Dewayne L Appearance Kirtlan G. Naylor	Jonathan P. Brody
	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Naylor, Kirtlan G. (attorney for Briscoe, Dewayne L) Receipt number: 0000033 Dated: 1/2/2013 Amount: \$66.00 (Check) For: Briscoe, Dewayne L (defendant), City of Sun Valley, Idaho (defendant) and Ribí, Nils A (defendant)	Jonathan P. Brody
1/7/2013	Defendent's Answer to Plaintiff's Amended Complaint for Damages and Demand for Jury Trial	Jonathan P. Brody
2/8/2013	Defendants' Motion For Costs Of Previously Dismissed Action Pursuant to I.R.C.P 41(d)	Jonathan P. Brody
	Affidavit of Jacob H. Naylor in Support of Defendent's Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d)	Jonathan P. Brody
2/26/2013	Notice Of Hearing Re: Defendant's Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Hearing Scheduled (Motion 03/19/2013 01:30 PM) Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Defendants' Motion to Appear Telephonically for Hearing on Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
3/12/2013	Order granting Defendants' Motion to Appear Telephonically for Hearing on Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Plaintiff's Motion for permission to appear telephonically	Jonathan P. Brody
	Plaintiff's Response in Opposition to Defendants' Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Support of Plaintiff's Response in Opposition to Defendants' Motion for Costs of Previously Dismissed Action	Jonathan P. Brody
3/13/2013	Order granting Plaintiff's motion for permission to appear telephonically	Jonathan P. Brody
3/15/2013	Reply Brief in Support of Defendants' Motion for Costs of Previously Dismissed Action Pursuant to I.R.C.P. 41(d)	Jonathan P. Brody
3/18/2013	Continued (Motion 03/19/2013 09:00 AM) Telephonic in Minidoka Co. Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	Jonathan P. Brody

Other Claims

Date		Judge
3/19/2013	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: brennan rego Receipt number: 0002199 Dated: 3/19/2013 Amount: \$84.00 (Credit card)	Jonathan P. Brody
	Miscellaneous Payment: Technology Cost - CC Paid by: brennan rego Receipt number: 0002199 Dated: 3/19/2013 Amount: \$3.00 (Credit card)	Jonathan P. Brody
	Hearing result for Status scheduled on 03/19/2013 09:00 AM: Court Minutes Telephonic in Minidoka Co.	Jonathan P. Brody
	Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	
	Hearing result for Status scheduled on 03/19/2013 09:00 AM: District Court Hearing Held Court Reporter:NONE Estimated Number of Transcript Pages for this hearing: Telephonic in Minidoka Co.	Jonathan P. Brody
	Motion for Costs of Previously Dismissed Action-Plaintiff's counsel, Defendants and Counsel to Appear Telephonically	
	Hearing Vacated Motion scheduled on 03/19/2013 01:30 PM	Jonathan P. Brody
4/2/2013	Amended Notice Of Hearing Re: Defendants' Motin for Costs of Previously Dismissed Action	Jonathan P. Brody
	Hearing Scheduled (Motion 04/16/2013 01:30 PM) Motion for costs of Previously Dismissed Action	Jonathan P. Brody
4/10/2013	Notice Of Service Of Discovery Requests to Defendant City of Sun Valley	Jonathan P. Brody
4/15/2013	Request to obtain approval to video record, broadcast or photograph a court proceeding & Order	Jonathan P. Brody
4/16/2013	Court Minutes Hearing type: Motion Hearing date: 4/16/2013 Time: 2:02 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: MINI Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/16/2013 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Motion for costs of Previously Dismissed Action less 100	Jonathan P. Brody
	Case Taken Under Advisement	Jonathan P. Brody
4/24/2013	Memorandum Decision Denying Defendants' motion for costs of previously dismissed action pursuant to IRCP 41(d)	Jonathan P. Brody
	no longer u/a	Jonathan P. Brody
4/26/2013	Notice Of Service of Defendants City of Sun Valley's First Set of Interrogatories, Requests for Produciton of Documents, and Requests for Admission to Plaintiff	Jonathan P. Brody

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 4 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribl, Dewayne L Briscoe

Other Claims

Date		Judge
5/17/2013	Notice Of Service Re: Defendant City of Sun Valley's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents	Jonathan P. Brody
5/29/2013	Acceptance Of Service of Subpoena	Jonathan P. Brody
6/11/2013	Notice of Compliance	Jonathan P. Brody
6/19/2013	Notice of Compliance	Jonathan P. Brody
6/20/2013	Notice of compliance	Jonathan P. Brody
6/27/2013	Stipulation for Protective Order	Jonathan P. Brody
7/3/2013	Order Re: Stipulation for Protective Order	Jonathan P. Brody
9/17/2013	Hearing Scheduled (Motion to Dismiss 10/01/2013 02:00 PM)	Jonathan P. Brody
	Motion to Dismiss	Jonathan P. Brody
	Memorandum in Support of Defendants' Motion to Dismiss	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in Support of Motion to Dismiss	Jonathan P. Brody
9/24/2013	Errata to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	Jonathan P. Brody
	Plaintiff's Response in Opposition to Defendants' Motion to Dismiss	Jonathan P. Brody
9/27/2013	Reply Memorandum in Support of Defendants' Motion to Dismiss	Jonathan P. Brody
10/1/2013	Court Minutes Hearing type: Motion to Dismiss Hearing date: 10/1/2013 Time: 2:45 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: ANDREA Tape Number: Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Dewayne Briscoe, Attorney: Kirtlan Naylor Party: Nils Ribl, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz	Jonathan P. Brody
	Hearing result for Motion to Dismiss scheduled on 10/01/2013 02:00 PM: District Court Hearing Held Court Reporter: Maureen Newton Estimated Number of Transcript Pages for this hearing: 1-100 pages	Jonathan P. Brody
	Hearing result for Motion to Dismiss scheduled on 10/01/2013 02:00 PM: Case Taken Under Advisement	Jonathan P. Brody
11/4/2013	Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena	Jonathan P. Brody
	Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Compel	Jonathan P. Brody
	Affidavit of Attorney James R. Donoval Related to Motion to Compel	Jonathan P. Brody

Other Claims

Date		Judge
11/4/2013	Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
11/6/2013	Hearing Scheduled (Motion 12/03/2013 01:30 PM) Motion to Enforce Subpoena	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Continued (Motion 12/17/2013 01:30 PM) Motion to Enforce Subpoena	Jonathan P. Brody
	Amended Notice Of Hearing	Jonathan P. Brody
11/8/2013	Notice Of Taking Deposition of Franz Suhadolnik	Jonathan P. Brody
	Stipulated Joint Discovery Management Plan	Jonathan P. Brody
	Notice of Taking Deposition of Michelle Griffith	Jonathan P. Brody
	Notice Of Taking Deposition of Robert Youngman	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Michelle Griffith	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Franz Suhadolnik	Jonathan P. Brody
	Amended Notice Of Taking Deposition Duces Tecum of Robert Youngman	Jonathan P. Brody
11/22/2013	Order Re: Stipulated Joint Discovery Management Plan	Jonathan P. Brody
11/26/2013	Memorandum Decision Granting Defendants Motion to Dismiss	Jonathan P. Brody
11/29/2013	Defendants' Motion to Remove Defendants Ribi and Briscoe from the Case Caption	Jonathan P. Brody
12/10/2013	Defendant's Opposition To Plaintiff's Motion to Enforce Subpoena	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in Opposition to Plaintiff's Motion to Compel	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribi and Briscoe's Motion to Dismiss	Jonathan P. Brody
	Plaintiff's Motion for Reconsideration of Defendants Ribi and Briscoe's Motion to Dismiss	Jonathan P. Brody
12/11/2013	Hearing Scheduled (Motion for Reconsideration 01/07/2014 01:30 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Continued (Motion for Reconsideration 01/21/2014 02:00 PM)	Jonathan P. Brody
	Amended Notice Of Hearing	Jonathan P. Brody
12/13/2013	Reply in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Supplemntal Affidavit of Counsel in Support of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and To Compel the Production of Documents Withheld From Production in Discovery and in Response to Subpoena	Jonathan P. Brody
	Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion to Compel	Jonathan P. Brody
12/16/2013	Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody

Other Claims

Date		Judge
12/17/2013	Court Minutes Hearing type: Motion Hearing date: 12/17/2013 Time: 2:03 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion scheduled on 12/17/2013 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Motion to Enforce Subpoena less 100	Jonathan P. Brody
12/18/2013	Order Granting Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody
1/9/2014	Transcript Filed (12/17/13 Hearing)	Jonathan P. Brody
1/14/2014	Defendants' Opposition To Plaintiff's Motion for Reconsideration	Jonathan P. Brody
1/16/2014	Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
	Order Granting Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
	Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Defendants Ribí and Briscoe's Motion to Dismiss	Jonathan P. Brody
1/17/2014	Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel	Jonathan P. Brody
1/21/2014	Court Minutes Hearing type: Motion for Reconsideration Hearing date: 1/21/2014 Time: 2:45 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Dewayne Briscoe, Attorney: Kirtlan Naylor Party: Nils Ribí, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion for Reconsideration scheduled on 01/21/2014 02:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: telephonic less 100	Jonathan P. Brody
	Notice of Compliance	Jonathan P. Brody
1/22/2014	Hearing Scheduled (Scheduling Conference 02/04/2014 01:30 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
1/28/2014	Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
1/29/2014	Order Granting Defendant's Motion to Appear Telephonically for Hearing	Jonathan P. Brody

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 7 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribl, Dewayne L Briscoe

Other Claims

Date		Judge
1/29/2014	Order Granting Plaintiff's Motion for Permission to Appear Telephonically	Jonathan P. Brody
1/31/2014	Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Repsonse to Subpoena, Oral Argument Requested	Jonathan P. Brody
	Supplemental Affidavit of Wayne Willich Former Mayor of the City of Sun Valley in Support of Motion to Reconsider Denial of Motion to Compel	Jonathan P. Brody
2/4/2014	Court Minutes Hearing type: Scheduling Conference Hearing date: 2/4/2014 Time: 1:45 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz	Jonathan P. Brody
	Hearing result for Scheduling Conference scheduled on 02/04/2014 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: telephonic less 100	Jonathan P. Brody
2/5/2014	Hearing Scheduled (Status 02/03/2015 01:30 PM)	Jonathan P. Brody
	Hearing Scheduled (Jury Trial 04/08/2015 09:00 AM) 8 days	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Motion for IRCP 37(e) discovery sanctions against Plaintiff	Jonathan P. Brody
	Affidavit of Kirtlan G. Naylor in support of discovery sanctions (Under Seal)	Jonathan P. Brody
	Document sealed	
2/14/2014	Memorandum in Support of Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Non-Party Patricia Ball and to Compel the Production of Documents Withheld from Production in Discovery and in Response to Subpoena	Jonathan P. Brody
2/18/2014	Memorandum Decision Denying Motion to Reconsider	Jonathan P. Brody
	Memorandum Decision Denying Motion to Amend	Jonathan P. Brody
2/21/2014	Briefing Schedule for Defendant's Motion for Sanctions	Jonathan P. Brody
2/26/2014	Hearing Scheduled (Motion 04/14/2014 02:30 PM) for Reconsideration	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Enforce Subpoena Against Patricia Ball and to Compel Production of Documents	Jonathan P. Brody
	Hearing Scheduled (Motion 04/14/2014 03:00 PM) for Petition to Appeal-Plaintiff to appear telephonically	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Notice Of Telephonic Hearing on Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody

Other Claims

Date		Judge
2/26/2014	Hearing Scheduled (Motion 04/14/2014 03:00 PM) for Permission to Appeal	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
	Plaintiff's Motion for Permission to Appeal	Jonathan P. Brody
3/10/2014	Plaintiff's Opposition To Defendant's Motion for Sanctions	Jonathan P. Brody
	Notice of Compliance with Briefing Schedule for Defendant's Motion for I.R.C.P. 37(e) Discovery Sanctions Against Plaintiff	Jonathan P. Brody
	Affidavit of James R. Donoval on Opposition to Defendant's Motion for Sanctions	Jonathan P. Brody
3/21/2014	Reply Memorandum in Support of Motion for I.R.C.P. 37(e) Discovery Sanctions Against Plaintiff	Jonathan P. Brody
4/7/2014	Defendants' Objection to Motion for Permissive Appeal	Jonathan P. Brody
	Defendant's Opposition To Plaintiff's Motion for Reconsideration to Deny Plaintiff's Motion to Compel	Jonathan P. Brody
4/11/2014	Stipulation for Scheduling and Planning Dates	Jonathan P. Brody
4/14/2014	Hearing result for Motion scheduled on 04/14/2014 03:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Permission to Appeal less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/14/2014 03:00 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Petition to Appeal-Plaintiff to appear telephonically less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 04/14/2014 02:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: for Reconsideration-Telephonic less 100	Jonathan P. Brody
	Case Taken Under Advisement	Jonathan P. Brody
4/17/2014	Order on motion for discovery sanctions	Jonathan P. Brody
5/8/2014	Order Denying Permissive Appeal	Jonathan P. Brody
	No Longer UA	Jonathan P. Brody
	Scheduling Order, Notice Of Trial Setting And Initial Pretrial Order	Jonathan P. Brody
5/16/2014	Memorandum Decision Denying Motion to Reconsider	Jonathan P. Brody
6/3/2014	Amended Scheduling Order, Notice Of Trial Setting And Initial Pretrial Order	Jonathan P. Brody
9/10/2014	Notice of Compliance	Jonathan P. Brody
9/30/2014	Notice Of Taking Deposition Upon Oral Examination of Karen Ginnett	Jonathan P. Brody
	Notice Of Taking Deposition Upon Oral Examination of Dr. Mary Barros-Bailey	Jonathan P. Brody
11/18/2014	Declaration of Susan Robertson	Jonathan P. Brody

Other Claims

Date		Judge
11/18/2014	Memorandum in Support of Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Notice Of Hearing Re: Defendant's Motion for Summary Judgment	Jonathan P. Brody
	Hearing Scheduled (Motion for Summary Judgment 12/16/2014 03:00 PM)	Jonathan P. Brody
	Declaration of Kirtlan G. Naylor	Jonathan P. Brody
	Declaration of Kirtlan G. Naylor- Exhibit F of Exhibit J is Filed under Seal	Jonathan P. Brody
	Document sealed	
	Hearing Scheduled (Motion for Summary Judgment 12/16/2014 02:00 PM) Plaintiff	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Wayne Willich in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Counsel in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
11/19/2014	Continued (Motion for Summary Judgment 12/16/2014 02:00 PM) Defendant	Jonathan P. Brody
	Amended Notice Of Hearing Re: Defendant's Motion for Summary Judgment	Jonathan P. Brody
11/21/2014	Corrected Memorandum in support of Sun Valley's motion for summary judgment	Jonathan P. Brody
12/1/2014	Defendant City of Sun Valley's List of Lay Witnesses for Trial	Jonathan P. Brody
12/2/2014	Sun Valley's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Plaintiff's Response to Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
	Affidavit of Counsel in Support of Plaintiff's Response to Sun Valley's Motion for Summary Judgment	Jonathan P. Brody
12/9/2014	Reply in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Supplemental Affidavit of James R. Donoval in Support of Plaintiff's Motion for Summary Judgment	Jonathan P. Brody
	Sun Valley's Reply Memorandum in Support of Motion for Summary Judgment	Jonathan P. Brody

Time: 10:53 AM

ROA Report

Page 10 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribí, Dewayne L Briscoe

Other Claims

[illegible]

Other Claims

Date		Judge
1/30/2015	Affidavit of Sharon R. Hammer in Support of Plaintiff's Motion for Reconsideration	Jonathan P. Brody
	Affidavit of James R. Donoval in Support of Plaintiff's Motion for Reconsideration	Jonathan P. Brody
	Facts in Support of Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
2/2/2015	Notice Of Filing	Jonathan P. Brody
2/4/2015	Notice Of Hearing	Jonathan P. Brody
	Hearing Scheduled (Motion 03/17/2015 01:30 AM) Motion for reconsideration of entry of Summary Judgment etc.	Jonathan P. Brody
	STATUS CHANGED: Closed pending clerk action	Jonathan P. Brody
2/6/2015	Motion for expedited ruling on motion to stay proceedings on petition for fees	Jonathan P. Brody
	Motion to stay proceedings on petition for fees pending reconsideration of entry of summary judgment and rulings on motion to withdraw	Jonathan P. Brody
	Memorandum in support of motion to stay proceedings on petition for fees pending reconsideration of entry of summary judgment and rulings on motion to withdraw	Jonathan P. Brody
	Affidavit of James R. Donoval in support of plaintiff's motion to stay petition for fees	Jonathan P. Brody
	Notice of filing	Jonathan P. Brody
2/9/2015	Defendant's Objection to Plaintiff's Motion to Stay and Motion to Expedite	Jonathan P. Brody
2/10/2015	Memorandum Decision on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	Jonathan P. Brody
	Order on Motion to Stay Proceedings on Petition for Stay and Motion to Expedite	Jonathan P. Brody
	Reply in Support of Motion to Stay Proceedings on Petition for Fees Pending Reconsideration of Entry of Summary Judgment and Rulings on Motion to Withdraw	Jonathan P. Brody
	Court Minutes	Jonathan P. Brody
	District Court Hearing Held (Status 2/10/2015 at 1:30pm in Minidoka County)	Jonathan P. Brody
	Court Reporter:Maureen Newton	
	Estimated Number of Transcript Pages for this hearing: less 100	
	Scheduling Order	Jonathan P. Brody
2/11/2015	Hearing Scheduled (Motion 03/03/2015 03:30 PM) Call into Conf. Call	Jonathan P. Brody
2/25/2015	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Donoval, James R (attorney for Hammer, Sharon R) Receipt number: 0001117 Dated: 2/25/2015 Amount: \$129.00 (Check) For: Hammer, Sharon R (plaintiff)	Jonathan P. Brody
	Bond Posted - Cash (Receipt 1118 Dated 2/25/2015 for 100.00)	Jonathan P. Brody
	Notice Of Appeal	Jonathan P. Brody

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 12 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribbi, Dewayne L Briscoe

Other Claims

Date		Judge
3/2/2015	Plaintiff's Objection to Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
	Memorandum in Support of Plaintiff's Objection to Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
3/3/2015	Court Minutes Hearing type: Motion to Withdraw Hearing date: 3/3/2015 Time: 2:24 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: Eric Swartz Hearing result for Motion to Withdraw scheduled on 03/03/2015 03:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Call into Conf. Call less 100	Jonathan P. Brody
	Hearing result for Motion scheduled on 03/17/2015 01:30 AM: Hearing Vacated Motion for reconsideration of entry of Summary Judgment etc.	Jonathan P. Brody
3/4/2015	Order Modifying Automatic Stay	Jonathan P. Brody
	Order Permitting Jones & Swartz PLLC to Withdraw as Attorneys for Plaintiff	Jonathan P. Brody
	Appealed To The Supreme Court	Jonathan P. Brody
	STATUS CHANGED: Inactive	Jonathan P. Brody
	Hearing Scheduled (Status 04/07/2015 04:00 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
	Notice Of Service of Order Permitting Jones & Swartz PLLC to Withdraw as Attorneys for Plaintiff	Jonathan P. Brody
3/11/2015	Defendant-Respondents' Request for Additional Transcript and Record	Jonathan P. Brody
3/16/2015	Miscellaneous Payment: Copies Of Transcript For Appeals Per Page Paid by: JDIDAHOLAW, PLLC Receipt number: 0001534 Dated: 3/16/2015 Amount: \$2,557.50 (Check)	Jonathan P. Brody
3/23/2015	Plaintiff: Hammer, Sharon R Appearance Wyatt Johnson	Jonathan P. Brody
4/6/2015	Continued (Status 04/07/2015 02:30 PM)	Jonathan P. Brody
4/7/2015	Motion to Supplement Objection to and Motion to Disallow Defendants Fees and Costs	Jonathan P. Brody
	Memorandum in Support of Motion to Supplement Objection and Motion to Disallow Fees and Costs	Jonathan P. Brody
	Supplemental Memorandum in Support of Plaintiff's Objection to, and Motion to Disallow, Defendants' Memorandum of Costs and Attorney Fees	Jonathan P. Brody
	Affidavit of Sharon R. Hammer in Opposition to Sun Valley's Memorandum of Costs and Fees	Jonathan P. Brody

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 13 of 14

Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribl, Dewayne L Briscoe

Other Claims

Date		Judge
4/7/2015	Court Minutes Hearing type: Status Hearing date: 4/7/2015 Time: 3:40 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: James Donoval Hearing result for Status scheduled on 04/07/2015 02:30 PM: District Court Hearing Held Court Reporter: Susan Israel Estimated Number of Transcript Pages for this hearing: less 100	Jonathan P. Brody
4/9/2015	Hearing Scheduled (Motion 06/02/2015 01:30 PM)	Jonathan P. Brody
4/15/2015	Notice of Hearing and Scheduling Order on Motions	Jonathan P. Brody
5/19/2015	Defendants' Notice of Non-Opposition	Jonathan P. Brody
	Sun Valley's Objection to Plaintiff's Motion for Reconsideration of Summary Judgment	Jonathan P. Brody
	Defendants' Response to Plaintiff's Motion to Disallow Costs and Fees	Jonathan P. Brody
5/26/2015	Reply Memorandum in Support of Plaintiff's Motion for Reconsideration of Entry of Summary Judgment	Jonathan P. Brody
	Affidavit of James R. Donoval in Response to Allegations of Conflict of Interest with Attorney Eric Swartz(Under Seal)	Jonathan P. Brody
	Document sealed	
	Notice Of Filing	Jonathan P. Brody
	Reply Memorandum in Support of Motion to Disallow Costs and Fees	Jonathan P. Brody
5/27/2015	Defendants' Motion to Strike or in the Alternative to Order Production	Jonathan P. Brody
	Motion to Shorten Time	Jonathan P. Brody
	Notice Of Hearing Re: Defendants' Motion to Strike	Jonathan P. Brody
	Declaration of Tyler D. Williams in Support of Defendants' Motion to Strike	Jonathan P. Brody
	Defendants' Memorandum in Support of Motion to Strike or in the Alternative to Order Production	Jonathan P. Brody
5/28/2015	Order Shortening Time	Jonathan P. Brody
5/29/2015	Notice Of Service of affidavit filed under seal, response to motion to strike, and request that affidavit remain under seal	Jonathan P. Brody
6/2/2015	Court Minutes Hearing type: Motion Hearing date: 6/2/2015 Time: 2:08 pm Courtroom: District Courtroom-judicial Bldg Court reporter: Maureen Newton Minutes Clerk: Crystal Rigby Tape Number: DC Party: City of Sun Valley, Idaho, Attorney: Kirtlan Naylor Party: Sharon Hammer, Attorney: James Donoval	Jonathan P. Brody

Date: 7/21/2015

Fifth Judicial District Court - Blaine County

User: CRYSTAL

Time: 10:53 AM

ROA Report

Page 14 of 14

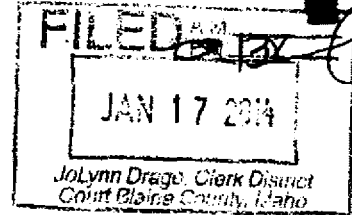
Case: CV-2012-0000479 Current Judge: Jonathan P. Brody

Sharon R Hammer vs. City of Sun Valley, Idaho, etal.

Sharon R Hammer vs. City of Sun Valley, Idaho, Nils A Ribi, Dewayne L Briscoe

Other Claims

Date		Judge
6/2/2015	Hearing result for Motion scheduled on 06/02/2015 01:30 PM: District Court Hearing Held Court Reporter:Maureen Newton Estimated Number of Transcript Pages for this hearing: Mot. to Strike-Defendants less 100	Jonathan P. Brody
6/8/2015	Order on Motion to Reconsider Entry of Summary Judgment	Jonathan P. Brody
	Order on Motion to Seal Affidavit	Jonathan P. Brody
6/9/2015	Order On Motion to Seal Affidavit	Jonathan P. Brody
6/10/2015	Notice of Transcript Lodged	Jonathan P. Brody
6/18/2015	Plaintiff's First Request to Supplement the Record on Appeal	Jonathan P. Brody
	Plaintiff's Second Request to Supplement the Record on Appeal	Jonathan P. Brody
6/29/2015	Certificate Of Service	Jonathan P. Brody
7/1/2015	Opinion and Order on Plaintiff's Motion to Disallow Costs and Attorney Fees	Jonathan P. Brody
7/2/2015	Supplemental Judgment	Jonathan P. Brody
	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Naylor & Hales PC Receipt number: 0003775 Dated: 7/2/2015 Amount: \$2.00 (Credit card)	Jonathan P. Brody
	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Naylor & Hales PC Receipt number: 0003775 Dated: 7/2/2015 Amount: \$1.00 (Credit card)	Jonathan P. Brody
	Miscellaneous Payment: Technology Cost - CC Paid by: Naylor & Hales PC Receipt number: 0003775 Dated: 7/2/2015 Amount: \$3.00 (Credit card)	Jonathan P. Brody
7/7/2015	Hearing Scheduled (Hearing Scheduled 08/04/2015 01:30 PM)	Jonathan P. Brody
	Notice Of Hearing	Jonathan P. Brody
7/17/2015	Stipulation of parties for inclusion of additional transcripts and record	Jonathan P. Brody
7/21/2015	Order	Jonathan P. Brody
	Hearing result for Hearing Scheduled scheduled on 08/04/2015 01:30 PM: Hearing Vacated	Jonathan P. Brody



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

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CASE NO. CV 2012-479

**MEMORANDUM DECISION DENYING PLAINTIFF'S MOTION TO ENFORCE
SUBPOENA AND COMPEL**

Sharon Hammer ("Plaintiff") brought a Motion to Enforce Subpoena against non-party Patricia Ball and to compel production of documents withheld from production in discovery and

MEMORANDUM DECISION DENYING MOTION TO ENFORCE SUBPOENA AND COMPEL

Page 1 of 11

in response to subpoena. Ms. Ball and the Defendants, City of Sun Valley (“Sun Valley”) are opposing the Motion claiming that attorney-client privilege and attorney work product protections apply. Oral argument was heard on this matter on December 17, 2013. Because this Court finds that the materials sought in the subpoena are protected by the work product doctrine, the Plaintiff’s Motion is denied.

FACTS AND BACKGROUND

The dispute at issue involves the Plaintiff, Sharon R. Hammer, and the Defendant, the City of Sun Valley. The dispute is centered on the Plaintiff’s treatment while an employee for the City of Sun Valley. The Plaintiff brought suit against the Defendant for retaliatory discharge in violation of the Idaho Protection of Public Employees Act (“IPPEA”).

This Motion raises similar issues to this Court’s decision in the Non-party City of Sun Valley’s Motion to Quash Subpoena in the *Ribi v. Donoval*, in Blaine County Case No. CV-2011-1040. There, this Court quashed a subpoena seeking Ms. Ball’s investigation material and the communications that coincided with the investigation into the Plaintiff’s activities as an employee for the City of Sun Valley, finding that the requested information was work product. Here, the Plaintiff has presented additional affidavits that contradict some of the findings in this Court’s *Memorandum Decision Granting Non-Party City of Sun Valley’s Motion to Quash Subpoena*.

Facts similar to the above mentioned subpoena are presented here. On November 10, 2011, following allegations of improper misuse of public funds and equipment by the Plaintiff, Sun Valley conducted a special executive City Council session on November 11, 2011, to evaluate the allegations. On or about November 12, 2011, the Plaintiff’s then-attorney, James R. Donoval, sent Mr. Wayne Willich, then Sun Valley mayor, a letter with intention to pursue

litigation against Sun Valley and other officials in connection with Plaintiff's allegations of harassment and the City's potential disciplinary action against her. Similar letters were also sent by Mr. Donoval on November 15 and 16, 2011, following another special executive session on November 14, 2011. There were three letters sent by Mr. Donoval to the mayor and members of the Sun Valley City Council between November 12, 2011 and November 17, 2011. All three of these letters either explicitly or implicitly threatened litigation against Sun Valley or members of its government. On November 21, 2011, Mr. Donoval, on behalf of Sharon Hammer, filed a lawsuit against Sun Valley and members of its government in Idaho's Fifth District Court, Blaine County.

On November 17, 2011, Adam King, the Sun Valley City Attorney, contacted Ms. Ball about the possibility of retaining her services for a fact-finding investigation regarding various allegations that could be the subject of litigation. On November 21, 2011, Sun Valley retained Ms. Ball for the purpose of conducting an investigation into alleged violations of City policy. On November 22, 2011, Kirtlan Naylor was assigned by Sun Valley's insurance carrier to provide legal defense to Sun Valley, and Mr. Naylor was appointed as Ms. Ball's primary legal contact on November 28, 2011. The scope of Ms. Ball's investigation included allegations concerning violations of city policy made against Ms. Hammer, as well as allegations made by Ms. Hammer against Nils Ribi in her November 21, 2011 lawsuit. On November 30, 2011, Ms. Ball was informed that the scope of the investigation was to be expanded into additional allegations. In conducting this investigation, Ms. Ball interviewed witnesses, reviewed information, and drafted a report. Ms. Ball completed the factual basis of her report on December 9, 2011, and presented a draft of the report to Mr. Willich, Mr. Briscoe, the City Council, Mr. King and Mr. Naylor on December 12, 2011. Following corrections, the report was concluded on December 20, 2011 by

Sun Valley; however the Plaintiff asserts that the investigation was completed on December 12, 2011. Portions of this report were later provided to the Blaine County Prosecutor for review as to any criminal conduct.

On May 6, 2013, the Plaintiff issued a subpoena to Ms. Ball seeking to produce all audio tapes of interviews, documents, communications, agreements, and reports obtained or produced in connection with Ms. Ball's investigation for Sun Valley, also referred to as the Hammer Disciplinary Investigation. Ms. Ball informed Sun Valley of the subpoena, and Sun Valley responded to the subpoena on June 24, 2013 and provided what they considered non-privileged documents and lodged objections as to privileged information. Plaintiff then began attempts to meet and confer to seek production of those privileged documents. On November 1st, 2013, Plaintiff filed the Motion to Enforce Subpoena.

LEGAL STANDARD

I.R.C.P. 26(b)(1) permits broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is "reasonably calculated to lead to the discovery of admissible evidence." I.R.C.P. 26(b)(1). The burden of showing information is privileged, and therefore exempt from discovery, is on the party asserting the privilege. *Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04, 116 P.3d 27, 33-34 (2005) citing *Ex parte Niday*, 15 Idaho 559, 98 P. 845 (1908). I.R.E. 502(b) states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyer's representatives, in any combination, concerning a matter of common

interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client". I.R.E. 502(b). A communication is confidential where it is not intended to be disclosed to third parties, other than those third parties who are furthering the rendition of professional legal services to the client or who are necessary to transmit the confidential communication. I.R.E. 502(a)(5).

Furthermore, work product is generally immune from discovery. *See* I.R.C.P. 26(b)(3). Work product is considered "documents and tangible things otherwise discoverable... prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent)..." *Id.* Work product can only become discoverable "upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.* Additionally, "[i]n ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation, including communications between the attorney and client, whether written or oral." *Id.*

DISCUSSION

Sun Valley argues that the Motion to enforce the Plaintiff's subpoena should be denied because the subpoena seeks protected work product and material protected by the attorney-client

privilege. The Plaintiff argues that the material sought is not protected by the attorney-client privilege and should not be considered work product.

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation “by or for another party or by or for that other party’s representative...only upon a showing that the party seeking discovery has substantial need of the materials...and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” I.R.C.P. 26(b)(3). If discovery of such material is ordered, “the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” *Id.*

There is ample support in the record that Ms. Ball was retained by Sun Valley in anticipation of litigation, and that her investigation was substantially focused on issues that appeared ripe for impending litigation. Aff. Ball, ¶ 5; Aff. King, ¶ 14. Ms. Ball was consulted after Mr. Donoval had threatened litigation, was retained on the same day Mr. Donoval initiated litigation, and conducted an investigation squarely related to that and other potential litigation. Aff. King, Ex. A, p. 5, Aff. King, ¶ 15, Aff. Ball, ¶ 5,7. Therefore, Ms. Ball’s report was prepared in large part for Sun Valley in anticipation of, or in conjunction with pending and anticipated litigation. There have been new affidavits produced that create inconsistencies as to when the investigation was completed. This Court’s previous finding is that the investigation was completed on December 20th, 2011. Plaintiff now argues, and relies on Mr. Willich’s new affidavits, that by December 12, 2011, Ms. Ball’s investigation and work was complete, and that anything beyond this point was no longer authorized work product. However, there is not enough evidence that shows that this Court’s previous finding that the investigation was completed on December 20th, 2011, was incorrect. In fact, e-mail communications provided *in camera*

contradict Mr. Willich's assertion that he gave Ms. Ball no authority or direction to modify the "Final Ball Report" in any manner after December 12, 2011. K. Naylor Aff., Ex. B, SV IN CAMERA 57; Ex. L, ¶ 14. Furthermore, Plaintiff's affidavit states that Mr. Willich stated to her on December 16, 2011, "that the report of Special Investigator Ball was close to being completed and that disciplinary charges against me, if any, would be determined in a few days." Aff. K. Naylor, Ex. G, ¶ 5. This further shows that Mr. Willich did not see the investigation as complete on December 12, 2011. This Court continues to find that for the purposes of this motion, Ms. Ball's investigation was complete on December 20, 2011.

Moreover, if Sun Valley retained Ms. Ball in substantial part to conduct her investigation in anticipation of litigation, as this Court finds it did, the materials produced as part of that investigation are protected under I.R.C.P. 26(b)(3). It is irrelevant whether Mr. Naylor was her primary contact, or whether Ms. Ball was retained as an attorney or merely an investigator. I.R.C.P. 26(b)(3) protects material produced in anticipation of litigation either for a party or for that party's representative.

The work product doctrine protects disclosure of communications. *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). "Communications" are precisely what the Plaintiff seeks in the subpoena, essentially all documents generated in connection with Ms. Ball's disciplinary investigation. The Plaintiff is free to depose any of the individuals interviewed by Ms. Ball in the course of her investigation in order to discover underlying facts which may be related to this case. However, the Plaintiff is not entitled to copies, however recorded, of Ms. Ball's interviews with witnesses or communications with Sun Valley representatives engaged in pursuant to Ms. Ball's duty as an investigator. Furthermore, the Plaintiff is not entitled to the e-mails produced in accordance with the investigation. The Plaintiff can obtain the underlying facts obtained by Ms.

Ball in these interviews through other discovery methods. Notably, the report itself became publically available and Plaintiff has it.

It is possible under certain circumstances to waive the work product doctrine. If work product is disclosed, and that disclosure is to an adversary, the protection is lost. *Trustees of Elec. Workers No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc.*, 266 F.R.D. 1, 14-15 (D.C. Cir. 2010) (citations omitted). In this case, part of Ms. Ball's report was disclosed to the Blaine County Prosecutor. Blaine County and Sun Valley are not adversaries; rather they share a common interest. Disclosure to the Blaine County Prosecutor is consistent with maintaining secrecy from Sun Valley's adversaries. See *U.S. v. AT&T*, 642 F.2d 1285, 1300 (D.C. Cir. 1980) (MCI's disclosure of work product to the government, for the purpose of aiding in the investigation of MCI's opponent did not waive work product immunity). "While the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself [to waive protection of work product]." *Id.* at 1299. Since there has been no showing that Sun Valley disclosed its work product to an adversary, it has not waived protection of its work product.

Moreover, the Plaintiff has not shown that Sun Valley has waived work product protection. The Plaintiff argues that Sun Valley has waived its attorney-client and work product privilege. While there is no direct Idaho case law on the issue, the Plaintiff cites to federal case law which analyzes a similar work product rule. Under the federal rule, work product protection is only waived when fairness requires, and is limited to the subject matter of the related disclosure, and does not create a blanket waiver of the work product privilege in the entire case. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100-01 (9th Cir. 2010). "[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other

such communications on the same subject.” *Weil v. Investment Indicators, Research & Mgmt., Inc.*, 647 F. 2d 12, 23 (9th Cir. 1981). The Plaintiff attempts to argue that the voluntary waiver of a single document waives all communications presented in a case. However, this is not the case. Even a case cited by the Plaintiff states “[w]e conclude, then, that while the mere showing of a voluntary disclosure to a third person will generally suffice to show waiver of the attorney-client privilege, it should not suffice in itself for waiver of the work product privilege.” *Permian Corp. v. United States*, 665 F.2d 1214, 1219 (D.C. Cir. 1981) citing *United States v. AT&T*, 642 F.2d 1285, 1299 (D.C.Cir.1980). Because Ms. Ball’s findings were disclosed to the Blaine County Prosecutor does not mean that waiver should be applied to all of Ms. Ball’s other communications. Furthermore, there has been no evidence produced by the Plaintiff that the Defendant has voluntarily disclosed any attorney-client communications between Mr. King and Mr. Naylor nor any of the work product currently not being disclosed. Therefore, the privileges remain. Lastly, Plaintiff’s argument that Mr. Naylor and Mr. King were unauthorized to participate in Ms. Ball’s investigation is not supported by the evidence in the record.

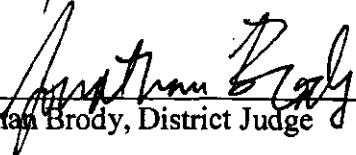
The Plaintiff has not shown that she cannot obtain the underlying facts through depositions, interrogatories, requests for production, or other discovery methods, nor has the Plaintiff shown either a substantial need for Ms. Ball’s materials, nor an undue hardship in attaining the substantial equivalent of these materials by other means, and again, the Plaintiff has the report itself. Because the Plaintiff has not met the burden under I.R.C.P. 26(b)(3), and this Court finds that Ms. Ball was retained in anticipation of litigation, and the materials she prepared were prepared in anticipation of litigation, those materials are protected. Because of this, there is no need to analyze whether those materials are protected from disclosure under the attorney-client privilege.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion to Enforce Subpoena and Compel is hereby DENIED. As to fees and expenses, I.R.C.P. 37(a)(4) may require further argument. Fees and costs are denied without prejudice at this time and the issue will be discussed at the next hearing.

IT IS SO ORDERED

Dated: 1/17/14

Signed: 
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Minidoka, do hereby certify that on the 22 day of January, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: MEMORANDUM DECISION DENYING PLAINTIFF'S MOTION TO ENFORCE SUBPOENA AND COMPEL to each of the persons as listed below:

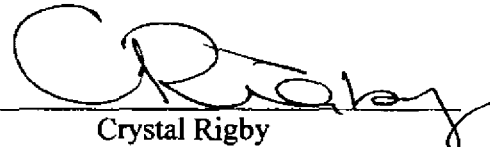
Kirtlan Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702

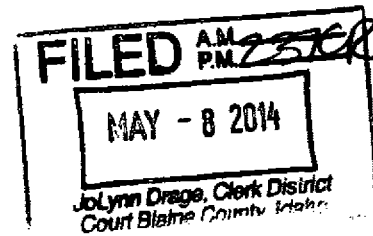
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

Eric B. Swartz
1673 W. Shoreline Drive, Suite 200
P.O. Box 7808
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Via Facsimile

CLERK OF THE DISTRICT COURT

BY: 
Crystal Rigby
Deputy Clerk



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

v.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

CASE NO. CV-2012-479

**ORDER DENYING PERMISSIVE
APPEAL**

ORDER DENYING PERMISSIVE APPEAL

ORDER DENYING PERMISSIVE APPEAL

Page 1 of 4

On April 15, 2014, the Plaintiff filed a Motion for Permissive Appeal from this Court's January 21, 2014, Memorandum Decision Granting Defendants Motion to Dismiss and the corresponding Memorandum Decision Denying Motion to Reconsider. The motion was heard on April 15, 2014, and taken under advisement. This Court, pursuant to I.A.R. 12, now DENIES the Motion for Permissive Appeal and enters this order on the following grounds.

I.A.R. 12 authorizes a party to appeal an interlocutory order that is not otherwise appealable under Rule 11, but only when certain criteria are satisfied. The issue must "involve[] a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation." I.A.R. 12(a). Permissive appeals under Rule 12 are only for exceptional cases. *Budell v. Todd*, 105Idaho 2, 4, (1983).

This Court dismissed two parties from this action, Mr. Ribí and Mr. Briscoe, because they cannot be held individually liable under the Idaho Public Protection of Employees Act, "IPPEA," statute. While there was no direct Idaho case law on the issue in the Motion to Dismiss, this Court did a thorough analysis of the law found in the statute and applied similar legal frameworks on the same from other states courts. Therefore, there is no controlling question of law which there is substantial grounds for a difference of opinion.

Allowing an appeal now would increase the likelihood of a second appeal after final judgment has been entered. An appeal now would only prolong litigation. For those

reasons, it is this Court's opinion that an appeal from that order will not materially advance the orderly resolution of this litigation. As such, pursuant to I.A.R. 12, the Motion for Permissive Appeal is hereby DENIED.

IT IS SO ORDERED

Dated: 5/8/2014

Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Crystal Rigby, Deputy Clerk for the County of Blaine, do hereby certify that on the 8 day of May, 2014, I filed the original and caused to be served a true and correct copy of the above and foregoing document: ORDER DENYING PERMISSIVE APPEAL to each of the persons as listed below:

Eric B. Swartz
Jones & Swartz PLLC
1673 W. Shoreline Drive, Suite 200
Boise, Idaho 83707
Fax: 208-489-8988


☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Facsimile

Kirtlan G. Naylor
Naylor & Hales, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702
Fax: 208-383-9516

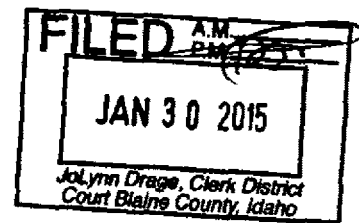
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Facsimile

CLERK OF THE DISTRICT COURT

BY: _____


Crystal Rigby
Deputy Clerk

James R. Donoval
4110 Eaton Ave., Suite D
Caldwell, ID 83607
Ph: (312) 859-2029
Fax: (208) 649-1603
Idaho Atty No. 8142
jdonoval@aol.com



Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF JAMES R.
DONOVAL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

STATE OF IDAHO)
 : ss.
County of Ada)

I, James R. Donoval, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. I am submitting this Affidavit to correct the Court's misunderstanding of the facts, circumstances and intent of myself and Sharon R. Hammer ("Ms. Hammer") related to Ms. Hammer's entry into a contractual relationship with the City Of Sun Valley ("Sun Valley") by

AFFIDAVIT OF JAMES R. DONOVAL IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

signing the City Administrator Employment Agreement in June of 2008 (the "Employment Agreement") (attached as Ex. A herein and as Ex. A of the Affidavit Of Susan Robertson in Support Of Sun Valley's Motion For Summary Judgment), and the submission of the Supplemental Hammer Release (attached as Ex. B herein and as Ex. C of the Affidavit Of Susan Robertson in Support Of Sun Valley's Motion For Summary Judgment) to Sun Valley on January 23, 2012, when the Court entered Summary Judgment against Ms. Hammer's claims herein on or about January 12, 2015.

3. I am married to Ms. Hammer, who from June 2008 to January 19, 2012, was the City Administrator of Sun Valley

4. I am a licensed attorney in Idaho, having been sworn-in to the Idaho State Bar in October 2009, and am still licensed to practice law in Illinois, having practiced law in Illinois since 1988.

5. In May of 2008, Ms. Hammer was provided a draft Employment Agreement Sun Valley which was drafted by former Sun Valley City Attorney Rand Peebles.

6. When Ms. Hammer was provided the already drafted Employment Agreement by Sun Valley, I provided legal advice to Ms. Hammer related to the terms and conditions of the Employment Agreement.

7. I was a former Certified Public Accountant, having been licensed in Illinois for several years during the 1990's, but gave up my CPA license to focus on practicing law. Based on my experience as a CPA, I am well aware that "severance pay" is defined by the Internal Revenue Service as wages for income and employment tax purposes and for income and employment tax withholding purposes.

8. In reviewing Section 3.A. of the Employment Agreement (the "Severance Clause"), and in particular the multiple use of the phraseology of "severance pay" or "severance payment" and "all claims and damages of any kind arising from a termination", both Ms. Hammer and I agreed that such phraseology clearly meant that any payments Ms. Hammer would receive should she ever be terminated by Sun Valley "without cause" pursuant to the Severance Clause, was intended to compensate Ms. Hammer for past services rendered, and did not include that Ms. Hammer would be barred from thereafter bringing any non performance, service, wage or employee benefit related causes of action against Sun Valley or its officials, should they arise, including any claims against Sun Valley and its officials related to the IPPEA.

9. Because both Ms. Hammer and I agreed that the phrases "severance pay", "severance payments" and "all claims and damages of any kind arising from a termination" in the Severance Clause only included payment for past services rendered to Sun Valley by Ms. Hammer as the Sun Valley City Administrator, or any employee benefits accrued by Ms. Hammer through that date such as vacation pay, and that such phraseology did not bar any claims unrelated to Ms. Hammer's performance, services, wages or employee benefits, including any potential future claims under the IPPEA, neither Ms. Hammer nor I requested that Sun Valley further define what was meant by the phrases "severance pay", "severance payments", or "all claims and damages of any kind arising from a termination" in the Severance Clause, when Ms. Hammer formally signed the Employment Agreement and entered into a contractual relationship with Sun Valley in June of 2008.

10. Beginning in November 2011, I also represented Ms. Hammer in various matters associated with legal disputes between Ms. Hammer, Sun Valley, and various Sun Valley officials and employees, and in particular in regards to Ms. Hammer's termination as the Sun

Valley City Administrator “without cause” pursuant to the Severance Clause on January 19, 2012, and in regards to the negotiations of payment of the “severance” Ms. Hammer was entitled to pursuant to the Severance Clause.

11. Attached hereto as Exhibit 1 is a true and correct copy of an email I sent to Mr. Naylor on January 13, 2012.

12. Attached hereto as Exhibit 2 is a true and correct copy of an email I sent to Mr. Naylor on January 14, 2012.

13. Attached as Exhibit 3 is a true and accurate copy of an email I sent to Mr. Naylor on January 16, 2012.

14. On January 18, 2012, I held a telephone conversation with Mr. Naylor. My memory of the telephone conversation is that Mr. Naylor specifically told me that Sun Valley would never let Ms. Hammer return as the Sun Valley City Administrator because she had sued Sun Valley City Council Member Nils Ribi and Sun Valley. My memory of the telephone conversation is that I told Mr. Naylor that even if Sun Valley terminates Ms. Hammer “without cause” that she was not required to waive any of her non service or wage types of claims against Sun Valley, including the IPPEA claims, even if she was paid her severance pay under the Employment Agreement. Attached as Exhibit 4 is a true and correct copy of an email I sent to Mr. Naylor immediately after the telephone conversation of January 18, 2012. On information and belief, as Mr. Naylor recorded all conversations between he and myself, Mr. Naylor possesses a recording or transcript of the January 18, 2012 telephone conversation, but refuses to turn the recording or transcript over to Ms. Hammer, myself or Ms. Hammer’s counsel Eric Swartz.

15. Attached hereto as Exhibit 5 is a true and correct copy of an email and letter I sent to Mr. Naylor on January 18, 2012.

16. On January 19, 2012, Ms. Hammer was terminated "without cause" by Sun Valley pursuant to the Severance Clause.

17. On January 20, 2012, Ms. Hammer signed a "Release Pursuant To City Administrator Employment Agreement" ("Original Hammer Release") which I drafted and witnessed, and which I personally served on Sun Valley on January 20, 2012, along with a letter I assisted Ms. Hammer draft of the same date. Attached as Exhibit 6 is a true and correct copy of the letter and the Original Conditional Release which I served on Sun Valley On January 20, 2012.

18. Attached as Exhibit 7 is a true and correct copy of an email I received from Mr. Naylor on January 20, 2012.

19. Attached as Exhibit 8 is a true and correct copy of an email I received from Mr. Naylor on January 21, 2012.

20. Attached as Exhibit 9 is a true and correct copy of a second email I received from Mr. Naylor on January 21, 2012, which included a "Release Pursuant To City Administrator Employment Agreement" that Mr. Naylor had drafted (the "Proposed Sun Valley Release"), which was attached to the email.

21. Attached as Exhibit 10 is a true and accurate copy of an email string between myself and Mr. Naylor on January 21, 2012.

22. Upon receipt of the January 21, 2012 email from Mr. Naylor and the Proposed Sun Valley Release from Mr. Naylor, I discussed the matter with Ms. Hammer. We both agreed that because the Severance Clause of the Employment Agreement referred to "severance"

payments, and that "severance" payments were "wages" which applied to past services that Ms. Hammer had rendered to Sun Valley as the Sun Valley City Administrator, that Ms. Hammer was entitled to receive the full amount of "severance" payments described in the Severance Clause, without being required to waive any other claims that Ms. Hammer possessed against Sun Valley and its officials, including in regards to the IPPEA, as had been demanded by Mr. Naylor in his emails of January 20, 2012 and January 21, 2012 and as was described in the Proposed Sun Valley Release.

23. Even though Sun Valley has asserted that Ms. Hammer only possessed two options, namely, to sign the Proposed Sun Valley Release and receive the "severance" described in the Severance Clause, or not sign the Proposed Sun Valley Release and not receive the "severance" Ms. Hammer was entitled to under the Severance Clause - both I and Ms. Hammer rejected that assertion by Mr. Naylor and Sun Valley. Instead, both Ms. Hammer and I agreed that the third option was that Ms. Hammer was legally entitled to submit a release to Sun Valley which did not waive "all" claims, but only claims that Ms. Hammer had foreseen being waived should Ms. Hammer ever be terminated by Sun Valley when she entered into the Employment Agreement in June of 2008, which did not include the IPPEA claim, and still be entitled to receive her "severance" pay.

24. Attached as Exhibit 11 is a true and correct copy of an email I sent to Mr. Naylor on January 23, 2012.

25. During January 22, 2012 and January 23, 2012, I drafted the Supplemental Hammer Release and discussed the matter with Ms. Hammer.

26. The phrase in the Supplemental Hammer Release which asserts that Ms. Hammer was only releasing claims that were "intended when the City Administrator Agreement was

entered into on June 1, 2008” (the “Conditional Clause”), was specifically placed in the Supplemental Hammer Release to provide notice to Sun Valley that Ms. Hammer was refusing to enter the unconditional language of “I release all claims against the City Of Sun Valley” that had been demanded by Mr. Naylor, in any release Ms. Hammer would be submitting, and to indicate that Ms. Hammer was not agreeing to releasing any non performance, service, wage or employee benefit related claims in return for receiving the “severance” under the Severance Clause, including any claims under the IPPEA, as Mr. Naylor had already been adequately informed of.

27. On January 23, 2012, Ms. Hammer signed the Supplemental Hammer Release in my presence.

28. Attached as Exhibit 12 is a true and correct copy of the email I submitted to Mr. Naylor and former Sun Valley Treasurer Michelle Frostenson (“Former Treasurer Frostenson”) on January 23, 2012, which included the Supplemental Hammer Release.

29. On January 23, 2012, I personally appeared at Sun Valley City hall intending to serve the Supplemental Hammer Release upon Sun Valley Mayor DeWayne Briscoe. Sun Valley Mayor DeWayne Briscoe was not present in Sun Valley City Hall when I appeared. The only person who was present at Sun Valley City Hall at the time was Former Treasurer Frostenson, who I personally served the original Supplemental Hammer Release upon, at which time I also explained to Ms. Frostenson what the document was.

30. On January 23, 2012, when I met with Former Treasurer Frostenson at Sun Valley City Hall, Former Treasurer Frostenson presented me with a proposed final Payroll Direct Deposit Voucher (the “Severance Pay Voucher”) for Ms. Hammer, which I reviewed and

approved as to the withholdings. Attached as Exhibit 13 is a true and correct copy of the Severance Pay Voucher.

31. Based on my experience as a former Certified Public Accountant, I was well aware that "severance pay" is defined by the IRS as "wages" for income tax purposes, and is subject to withholding for income and employment taxes. Based on my experience as a former Certified Public Accountant, I was well aware that "liquidated damages" or other civil damages are not subject to income and employment tax withholdings pursuant to IRS guidelines.

32. At the time I approved the withholdings and signed the Severance Pay Voucher, I considered all of the "severance pay" that Ms. Hammer was to receive as taxable "wages" pursuant to the Severance Clause for past services Ms. Hammer had rendered to Sun Valley, and not payment as settlement for any non payroll related claims that Ms. Hammer still possessed against Sun Valley, including any claims pursuant to the IPPEA, and certainly not "liquidated damages" of any sort. At the time, Former Treasurer Frostenson agreed with me that all of the "severance" payments that Ms. Hammer was to receive pursuant to the Severance Clause of the Employment Agreement and listed in the Severance Pay Voucher were "wages" subject to employment and income tax withholdings, and not "liquidated damages" or other damages. Had I believed that any of the "severance" payments were not wages, but instead liquidated or other damages, or had Former Treasurer Frostenson indicated that some of the "severance" Ms. Hammer was receiving was payment for claims other than for past services and wages or employee benefits, I would have required that Sun Valley not withhold any income or employment taxes from that portion of the "severance" that was being considered as "liquidated damages" or other non wage related payments.

33. On January 24, 2012, Ms. Hammer's and my checking account at Chase Bank received a direct deposit from Sun Valley for the "severance" balance due to Ms. Hammer pursuant to the Severance Clause in the sum of \$66,935.53, which is the amount that had been agreed to and indicated on the Severance Pay Voucher. Attached as Exhibit 14 is a true and accurate copy of Ms. Hammer and my checking account statement for the period ending January 27, 2012, indicating that the direct deposit of the \$66,935.53 of funds indicated in the Severance Pay Voucher was made on January 24, 2012.

34. As all of the "severance" Ms. Hammer received had been fully withheld for both income and employment tax purposes, I took that to be conclusive evidence that Sun Valley had agreed with Ms. Hammer and myself that all of the "severance" was for past services Ms. Hammer had performed for Sun Valley, and not liquidated or other damages for any of the other claims that Ms. Hammer asserted that she was entitled to proceed with, including the IPPEA claims, which would have then been exempt from any income or employment tax withholdings.

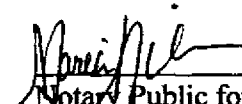
35. Between my submission of the Supplemental Hammer Release to Former Treasurer Frostenson and Mr. Naylor on January 23, 2012 and the deposit of the "severance" pay balance paid to Ms. Hammer on January 24, 2012 by direct deposit into our bank account, I received no communications from Mr. Naylor or any other Sun Valley employee or official, seeking to clarify or amend the language in the Supplemental Hammer Release, or placing any other further conditions upon Ms. Hammer receiving the "severance pay" provided for in the Severance Clause of the Employment Agreement, before Ms. Hammer was paid the "severance" pay due to Ms. Hammer pursuant to the Severance Clause of the Employment Agreement on January 24, 2012.

36. Based on the prior communications between myself and Mr. Naylor, and the notice to Mr. Naylor of the rejection that Ms. Hammer agree that the unconditional language of "I release all claims against the City of Sun Valley" be placed in a written release before Sun Valley would pay Ms. Hammer the "severance" pay she was entitled to pursuant to the Severance Clause of the Employment Agreement, I believed that Mr. Naylor and Sun Valley had accepted Ms. Hammer's conditions that she was entitled to the "severance pay" pursuant to the Severance Clause of the Employment Agreement without having to release any claims associated with the IPPEA, and thereafter paid her pursuant to such condition.

FURTHER AFFIANT SAYETH NAUGHT.


JAMES R. DONOVAL

SUBSCRIBED AND SWORN to before me this 26th day of January, 2015.


Notary Public for Idaho
My Commission expires 9/24/20

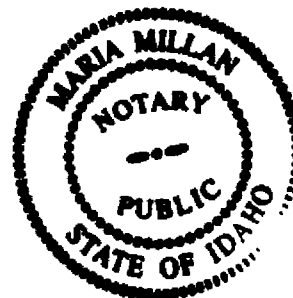


EXHIBIT A

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "**cause**", then Employer shall not be obligated to make any severance payment to Employee. "Cause" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee shall not be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, AND reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | | |
|-----|--------------------------|---|
| (1) | Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) | Employee:
[Temporary] | 360 W. Illinois St.
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion

thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Sun Valley has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, as of the date and year first above written.

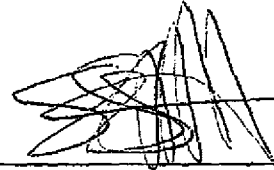
EMPLOYER

EMPLOYEE

CITY OF SUN VALLEY, a
municipal corporation

By:


Wayne Willich, Mayor


Sharon R. Hammer

ATTEST:

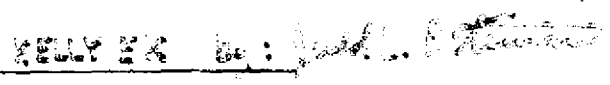

City Clerk

EXHIBIT B

SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

Witness

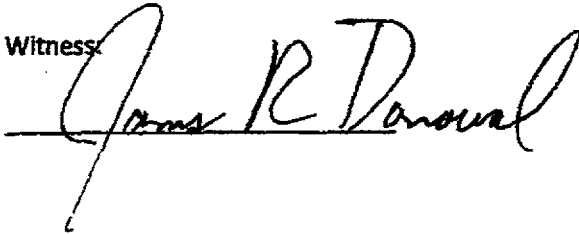


EXHIBIT 1

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhales.com>
Subject: Re: City Administrator Contract
Date: Fri, Jan 13, 2012 10:14 am

Kirt:

If the City is going to terminate Sharon without cause her contract does not require her to waive any tort or any other non contract claims she may have with the City. So if the City is going to terminate her without cause, we should work on a separation agreement that has the correct waiver language in it, and get it over with.

If the City is going to try to terminate her with cause, especially without any hearings or anything, you know that is going to face continued litigation regarding that issue alone.

As to your other email, Sharon and I have given you several settlement offers that you have dismissed outright, especially during Mayor Willich's tenure, and I have asked on several occasions to sit with you and your client and you have refused - so we did not believe we were incorrect in filing the pleading.

I would much rather have you provide me the settlement terms rather than the other way around, as thus far you have rejected anything we have put before you and have not countered. Please note that if you want a settlement of all matters, including any tort or IPPEA claims Sharon has, we are expecting that it also includes a dismissal of Mr. Rib's and Ms. Rib's claims against me. And regardless of the language, we thought that dismissing the suit first was a good faith effort to settle the issues.

Finally Kirt, there have been assertions all over the place of everyone doing bad acts. I am sorry for that. And you have probably not even been privy to some of the things that I have been subject to from Mr. Roark. However, the community here thinks this is a travesty and a waste of money and not what governments are supposed to be doing. However, if we are going to get to some resolution to this, it needs to give Sharon back her reputation. No one is going to win on every issue and we need to discuss the matters to get it resolved. I don't care if you record our conversations. But as much as we do not see eye to eye - we both need to get to some common ground otherwise this is going to go on forever.

Best Regards

JIM

Please call me when you get this to start working on where we are going..

000352

EXHIBIT 2

From: jdonoval <jdonoval@aol.com>

To: kirt <kirt@naylorhailes.com>

Subject: Re: Resolution follow up

Date: Sat, Jan 14, 2012 7:30 am

The Nils Ribi law suit is not an issue - I will fight that myself.

If the City Council terminates Sharon on Thursday, we will be in Court immediately to see whether your theory of no contract extension flies. And regardless of whether you terminate her "without cause" - she has a property interest in her employment which we will immediately seek to enforce. And of course I will immediately re-file the IPPEA claims. Is that what you really want - to continue litigation over this?

JIM

EXHIBIT 3

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhailes.com>
Subject: Hammer v. Sun Valley
Date: Mon, Jan 16, 2012 7:49 pm

Kirt:

I assume that you are also cognitive of the fact that if you lose the argument that Sharon is not entitled to the six month severance payment that under 45-615 you may be subjecting the City Of Sun Valley to treble damages, and it may eventually cost Sun Valley about \$200,000 in contract damages alone.

JIM

EXHIBIT 4

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhailes.com>
Subject: Today's Conversation
Date: Wed, Jan 18, 2012 2:03 pm

Kirt:

I will forward your offer to Ms. Hammer.

In the meanwhile, I am requesting that you retain the recording of today's conversation as I believe that you mentioned that one, if not the only, reason that the City is contemplating termination action against Ms. Hammer is because she filed a law suit. As the only two actions are the IPPEA law suit (which she had a right to file and has a right to re-file) and the Human Rights complaint (which is still pending), that evidence lends credence to the question of whether she is being terminated in retaliation for making valid claims against the City or Mr. Ribi. I do not want to "parse words" and therefore want to be sure of exactly what you said today in that conversation. Could you please provide me with a copy the transcript of today's telephone call.

Best Regards and Thank You

JIM DONOVAL

EXHIBIT 5

From: jdonoval <jdonoval@aol.com>

To: kirt <kirt@naylorhailes.com>

Subject: Hammer Issues

Date: Wed, Jan 18, 2012 3:46 pm

Attachments: 1-18_Letter_Pg_1_001.tif (645K), 1-18_Letter_Pg_2_001.tif (375K)

Kirt:

Ms. Hammer rejects the offer of earlier today. Please read the attached letter as well.

We continue to believe that the only non-punitive and retaliatory course for the City Of Sun Valley to take is to leave Ms. Hammer on administrative leave and let the external investigation be completed and then hold an internal investigation (if necessary), which will provide Ms. Hammer with all the due process protections that the City Of Sun Valley as heretofore failed to allow, before the City Of Sun Valley contemplates any further adverse actions of any type related to Ms. Hammer or her employment contract and/or status. I am requesting that you forward this email and the attached letter to your client(s) for review and contemplation before tomorrow's Sun Valley City Council meeting.

Best Regards

JIM DONOVAL .

JAMES R. DONOVAL

Attorney At Law

**4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 859-2029; (208) 721-7383
jdonoval@aol.com**

January 18, 2012

**Mr. Kirtlan Naylor
950 W. Bannock St., Suite 610
Boise, ID 83702**

Re: Sharon R. Hammer Contract And Termination

Dear Mr. Naylor:

I want to reiterate and add to some of the things that we mentioned in our just completed discussion.

First, should the City Of Sun Valley seek to terminate Ms. Hammer's contract without cause, and pay her the severance payment described therein, the language related to such states : "The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims of damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City Of Sun Valley." Please note that this language was drafted by then Sun Valley City Attorney Rand Peebles. As I have stated, the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribi and several other claims, do not arise "from a termination", they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement. So as I have stated, if the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.

I also want to remind you that on at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), Ms. Hammer has provided notice that Ms. Frostenson has

000628 60

shorted her retirement account by \$1,642 and that Ms. Frostenson has failed to accrue 120 hours of sabbatical vacation Ms. Hammer was entitled to (and was charged for) in June of 2011 equalling \$6,832. Please ensure that if the City Of Sun Valley terminates Ms. Hammer that those errors are corrected as part of Ms. Hammer's final termination payment.

If the City Of Sun Valley terminates Ms. Hammer with cause, or asserts that the contract is invalid or expired, then of course she does not waive any claims of any sort, including in regards to the contract itself.

Again, I want to remind you that should Ms. Hammer be required to litigate any matters related to Ms. Hammer's severance, then there is the potential that she would be entitled to treble damages and attorney's fees for the unpaid amounts pursuant to Idaho Statutes 45-615. Also, please note that should Ms. Hammer be terminated, she is making demand for payment of all compensation due within forty eight hours (48) as is required by Idaho Statutes 45-606.

Very Truly Yours,


JAMES R. DONOVAL

Jd:jd

Cc: S. Hammer

0006291

EXHIBIT 6

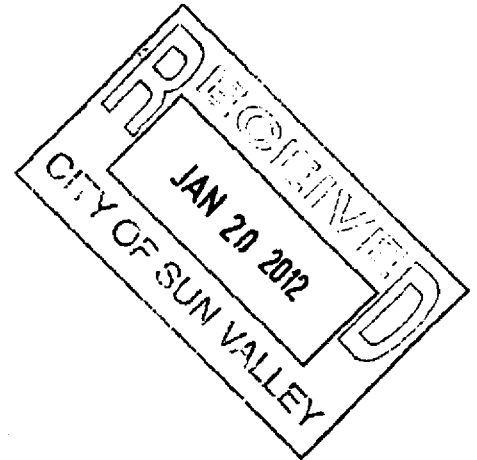
SHARON R. HAMMER

4325 Fairway Nine Condos
PO Box 1489
Sun Valley, ID 83353
(312) 965-0245
sharonrhammer@aol.com

January 20, 2012

City Of Sun Valley
c/o City Clerk Kelly Ek
Sun Valley City Hall
Sun Valley, ID 83353

Via Hand Delivery



Sharon R. Hammer – 48 Hour Severance Payment Demand Pursuant To Idaho Statute 45-606

City Of Sun Valley:

At approximately 5:30 p.m. on Thursday, January 19, 2012, the Sun Valley City Council, at the request of Mayor DeWayne Briscoe, terminated the existing City Administrator Employment Agreement (the "Agreement") between me and the City Of Sun Valley, pursuant to Section 3A of such Agreement. Therefore, I am requesting payment of all wages and compensation due within 48 hours, or by 10:00 a.m. Tuesday, January 24, 2012, as is required by Idaho Statutes 45-606.

Wages and compensation are as follows:

a) Pursuant to Section 3A of the Agreement, I am demanding payment for six months of compensation;

b) I am demanding payment of four days of salary for the period of January 16, 2012 through January 19, 2012, the date of termination of the Agreement, or the equivalent of \$1,858.88, at my current pay rate of \$58.09 per hour;

c) I am demanding payment of 188.88 hours of accrued vacation, as is detailed on my payroll records, equaling \$10,972.04, at my current pay rate of \$58.09 per hour;

d) I am demanding payment for 40 hours of vacation time I was mandated to request during the pay period ending December 18, 2011, because Mayor Willich instructed me to submit a request for vacation during the "administrative leave" period. The amount for this 40 hours equals \$2,323.60 at my current pay rate of \$58.09 per hour;

e) I am demanding payment for 120 hours of sabbatical vacation time I earned in June 2011. The sabbatical time was never reflected in my vacation accrual by Ms. Frostenson. On at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), I have provided notice that Ms. Frostenson shorted my vacation account by the 120 hours, and my vacation accrual account has not been corrected. I am demanding payment of \$6,907.80 for the 120 hours of non-accrued sabbatical vacation time at my current pay rate of \$58.09 per hour;

f) I am demanding payment for \$1,642 that Ms. Frostenson shorted my ICMA-RC retirement account in January 2010 when the initial deposit was made. On at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), I have provided a detailed accounting of the amounts withheld from my pay and not deposited into my ICMA-RC retirement account totaling \$1,642. I have not been paid this shortage or been provided an explanation as to why the shortage occurred. I am demanding payment of the \$1,642 retirement fund shortage.

I am demanding that all funds described herein be made by direct deposit in my Chase Bank Account No. (1110019465024) (see attached void check) as has been the practice of payment for wages, by 10:00 a.m. Tuesday, January 24, 2012. If such is not done, I consider the City Of Sun Valley to be in violation of the 48 hour payment requirement of Idaho Statutes 45-606. Should the City Of Sun Valley not make the payment demanded, or at least full payment of any non-disputed balances due pursuant to Idaho Statutes 45-611, then the City Of Sun Valley shall be subject to payment for treble damages, attorney's fees and costs pursuant to Idaho Statutes 45-615. Should the City Of Sun Valley dispute the balances demanded, I demand a written explanation for each category of compensation the City Of Sun Valley is disputing and a detail of the basis of the calculation of any undisputed balances actually paid.

I am demanding that all payments be in "gross", without any withholding for taxes, or any other employee related withholdings, as the payments are a "lump sum" payment related to the termination of the Agreement. Should any withholdings be made, they are specifically being done without my authority or approval, and I consider those to also be done in violation of Idaho Statute 45-606. The City Of Sun Valley will have then made a unilateral determination of withholdings from my separation without my approval. I certify that I will take responsibility for any and all taxes or employment related obligations associated with the payments demanded.

Finally, I have attached a Release Pursuant To City Administrator Employment Agreement which complies with the specific language of the Agreement. Should the City Of Sun Valley fail to make payment of the balances demanded by 10:00 a.m. Tuesday, January 24, 2012 due to any matters related to signing a release, I will consider the City Of Sun Valley to be in violation of Idaho Statutes 45-606.

Cordially,



SHARON R. HAMMER

RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

The City Administrator Employment Agreement dated June 1, 2008 between the City Of Sun Valley and Sharon R. Hammer, prepared by then Sun Valley City Attorney Rand Peebles, states as follows:

"The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims of damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause."

Therefore, pursuant to the language of the City Administrator Employment Agreement, I state as follows:

"I release all claims of damages of any kind arising from the termination of the City Administrator Employment Agreement by the City Of Sun Valley on January 19, 2011 and for any damages against the City Of Sun Valley arising from a termination without cause".


SHARON R. HAMMER

Witness:



James R. Donoval

EXHIBIT 7

From: Kirtan Naylor <kirt@naylorhales.com>
To: jdonoval <jdonoval@aol.com>
Subject: RE: Lump Sum payment
Date: Fri, Jan 20, 2012 11:34 am

That won't do. If our accountants tell us this should be considered salary, the only way we will 1099 is if there is an indemnification by your client of all taxes and penalties (including the to the City), if the IRS deems it to be salary.

Also, I just received the signed "release" and demand.

The release language you propose is not adequate. It needs to be identical to the Agreement, which states: "Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley."

Please revise your release agreement to replace the last paragraph with this language, in order for payment to be made:

"I release all claims against the City of Sun Valley."



Kirt Naylor
208.947.2070

00065167

EXHIBIT 8

From: Kirtlan Naylor <kirt@naylorhailes.com>

To: jdonoval <jdonoval@aol.com>

Subject: RE: Lump Sum payment

Date: Sat, Jan 21, 2012 3:08 pm

Add that sentence to the release, or we will not consider that she has complied with the agreement. There is no reason to delay this now. But you hold the "\$\$\$" in your hands. The lump sum payment is the consideration for the release.

The other demanded wages deal with her termination. They are not affected by this issue.

Please know that in order for this to be paid direct deposit, the City must file with the bank paperwork no later than the day before at 3:00pm. So, I encourage you to send the signed revised release soon.

Kirtlan G. Naylor

Direct 208 947-2070



NAYLOR & HALES, P.C.

950 WEST BANNOCK ST., SUITE 610 BOISE, ID 83702

This email is a confidential communication.
If it was sent to you mistakenly,
please notify me and destroy your copy.

EXHIBIT 9

RE: Lump Sum payment

<http://mail.aol.com/35478-211/aol-6/en-us/mail/PrintMessage.a>

From: Kirtlan Naylor <kirt@naylorhales.com>

To: Kirtlan Naylor <kirt@naylorhales.com>; jdonoval <jdonoval@aol.com>

Subject: RE: Lump Sum payment

Date: Sat, Jan 21, 2012 4:03 pm

Attachments: Release.pdf (42K)

Jim,

Also, the limiting language is part of the agreement she signed. So, when it says, "receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley," in essence, the lump sum isn't due until that condition has been met.

You quoted the rest of the paragraph, it seems that to quote the rest is exactly what should be done.

I have attached the acceptable release. If it is not received by 1:00pm Monday, payment will not be able to be made by direct deposit.

(also, your release references January 2011)



Kirt Naylor
208.947.2070

000665⁷¹

RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

The City Administrator Employment Agreement dated June 1, 2008 between the City of Sun Valley and Sharon R. Hammer, and as extended by the Extension dated September 17, 2009, states as follows:

The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley.

Therefore, pursuant to the language of the City Administrator Employment Agreement, I state as follows:

"I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City of Sun Valley."

Dated this ____ of January, 2012.

Sharon R. Hammer

James Donoval, Witness

EXHIBIT 10

On Jan 21, 2012, at 4:03 PM, "jdonoval@aol.com" <jdonoval@aol.com> wrote:

After 48 hours treble damages and attorney fees. You need to deposit all undisputed amounts within 48 hours.
Have a good weekend.

Sent from my Verizon Wireless BlackBerry

From: Kirtlan Naylor <kirt@naylorhailes.com>

Date: Sat, 21 Jan 2012 15:35:46 -0700

To: jdonoval@aol.com<jdonoval@aol.com>

Subject: RE: Lump Sum payment

Why is she not signing it before Wednesday?

<image003.png>

Kirt Naylor

208.947.2070

From: jdonoval@aol.com [mailto:jdonoval@aol.com]

Sent: Saturday, January 21, 2012 3:34 PM

To: Kirtlan Naylor

Subject: Re: Lump Sum payment

I'm thinking treble damages and attorney fees. Read the statutes. You can't put limiting language on payments. She will sign your release on wednesday specifically under duress. Talk to you on wednesday.

Sent from my Verizon Wireless BlackBerry

From: Kirtlan Naylor <kirt@naylorhailes.com>

Date: Sat, 21 Jan 2012 15:05:54 -0700

To: jdonoval@aol.com<jdonoval@aol.com>

Subject: RE: Lump Sum payment

Add that sentence to the release, or we will not consider that she has complied with the agreement. There is no reason to delay this now. But you hold the "\$\$\$" in your hands. The lump sum payment is the consideration for the release.

The other demanded wages deal with her termination. They are not affected by this issue.

EXHIBIT 11

From: jdonoval <jdonoval@aol.com>
To: kirt <kirt@naylorhailes.com>
Subject: New Release
Date: Mon, Jan 23, 2012 9:29 am

At Ms. Hammer's direction, I am preparing a supplemental release that we believe will conform to your request of Saturday. I will drop it off at the City Hall with the W-9 and email you a copy later today once she approves it.

JIM

EXHIBIT 12

From: jdonoval <jdonoval@aol.com>

To: mfrostenson <mfrostenson@sviadho.org>

Cc: kirt <kirt@naylorhales.com>

Subject: Revised W-4; Supplemental Release

Date: Mon, Jan 23, 2012 1:48 pm

Attachments: Revised_W-4_001.tif (571K), Supplemental_Release_001.tif (266K)

Please see attached. Thank You.

JIM DONOVAL

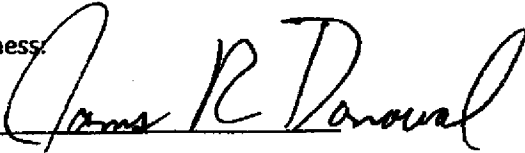
SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

Witness:


James R. Donoval

000677

EXHIBIT 13

**City of Sun Valley
Payroll Direct Deposit Voucher**

Direct Deposit Date

01/23/2012

Voucher No.

231202

Sharon R Hammer
PO Box 1499
Sun Valley ID 83353

<u>Routing #</u>	<u>Acct Type</u>	<u>Amount</u>
071000013	Checking Deposit	66,935.53

Hammer, Sharon R

(20011)

PAY PERIOD ENDING 01/29/2012

EARNINGS

DEDUCTIONS

TITLE	PERIOD		AMOUNT	YEAR-TO-DATE	
	HOURS	RATE		HOURS	AMOUNT
Regular	32.00	58.0900	1,856.88	192.00	11,153.28
Overtime	.00	.0000		.00	
Vacation	348.88	58.0900	20,266.44	388.88	22,590.04
Sick Pay	.00	58.0900		.00	
ON-CALL	.00	.0000		2.00	32.00
Misc Pay	.00	.0000	60,412.13	.00	60,862.13
Comp Time	.00	.0000		.00	
Allow/Exp	.00	.0000		.00	1,125.00
Deductible	.00	.0000		.00	
TOTAL GROSS	380.88		82,537.45	582.88	95,762.45
TOTAL DED			15,601.92 -		20,619.10 -
NET PAY			66,935.53		75,143.35

TITLE	PERIOD AMOUNT	Y-T-D AMOUNT
FICA	4,663.36 -	5,392.77 -
FWT	8,253.70 -	10,352.02 -
SWT	2,476.11 -	3,275.11 -
Annuity		
PERSI Ret	115.81 -	724.88 -
401K & Vol		
ICMA RETIR	92.94 -	559.26 -
Cr Union		
Other Ins		84.30 -
Flex Plans		230.76 -
Misc Ded		
TOTAL DED	15,601.92 -	20,619.10 -

BENEFITS

TITLE	PERIOD AMOUNT	Y-T-D AMOUNT
Soc Sec	5,117.32	5,917.73
Medicare	1,196.79	1,383.98
PERSI Ret	193.14	1,208.91
Health Ins		910.00
Dental Ins		67.73
Life Insur		
TOTAL BEN	7,505.95	10,648.03

	BEGINNING	ACCRUED	USED	REMAINING
Vacation	188.88	.00	.00	188.88
Sick Leave	376.10	.00	.00	376.10
Comp Time	.00	.00	.00	.00

OK as To Withholdings

JR Danoual
ATTX

000678

EXHIBIT 14



December 28, 2011 through January 27, 2012

Primary Account: 001110019465024

CHASE TOTAL CHECKING

SHARON R HAMMER

Account Number: 001110019465024

OR JAMES R DONOVAL

CHECKING SUMMARY

	AMOUNT
Beginning Balance	\$3,344.39
Deposits and Additions	74,143.90
Checks Paid	- 2,169.45
ATM & Debit Card Withdrawals	- 2,104.58
Electronic Withdrawals	- 2,902.97
Fees and Other Withdrawals	- 4.00
Ending Balance	\$70,307.29

This message confirms that you have overdraft protection on your checking account.

DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
12/29	Cash Back From Debit Card Bonus Offers	\$0.55
01/05	City of Sun Vall Payroll PPD ID: 1820294056	4,759.79
01/19	City of Sun Vall Payroll PPD ID: 1820294056	2,448.03
01/24	City of Sun Vall Payroll PPD ID: 1820294056	66,935.53
Total Deposits and Additions		\$74,143.90

CHECKS PAID

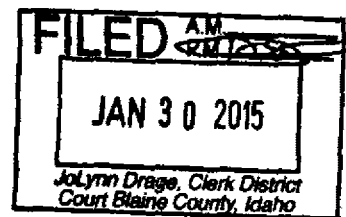
CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
2442 ^		01/18	\$375.00
2446 * ^		01/10	1,200.00
2447 ^		01/12	100.00
2448	Check # 2448 Intermountain G Checkpaymt Arc ID: 8820221463	01/11	164.11
2449 ^		01/18	94.19
2450 ^		01/18	214.00
2451 ^		01/18	22.15
Total Checks Paid			\$2,169.45

If you see a description in the Checks Paid section, it means that we received only electronic information about the check, not the original or an image of the check. As a result, we're not able to return the check to you or show you an image.

* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^ An image of this check may be available for you to view on Chase.com.

James R. Donoval
4110 Eaton Ave., Suite D
Caldwell, ID 83607
Ph: (312) 859-2029
Fax: (208) 649-1603
Idaho Atty No. 8142
jdonoval@aol.com



Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and De WAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF SHARON R.
HAMMER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

STATE OF IDAHO)
 : ss.
County of Ada)

I, Sharon R. Hammer, being first duly sworn upon oath, depose and state as follows:

1. I am the named Plaintiff in the above-captioned matter.
2. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.
3. I am submitting this Affidavit to correct the Court's misunderstanding of the facts, circumstances and my intent related to my entry into a contractual relationship with the

AFFIDAVIT OF SHARON R. HAMMER IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT - 1

City Of Sun Valley ("Sun Valley") by signing the City Administrator Employment Agreement (the "Employment Agreement") in June of 2008 (attached as Ex. A herein and as Ex. A of the Affidavit Of Susan Robertson in Support of Sun Valley's Motion For Summary Judgment), and the submission of a Supplemental Release (the "Supplemental Hammer Release") (attached as Ex. B herein and as Ex. C of the Affidavit Of Susan Robertson in Support of Sun Valley's Motion For Summary Judgment) to Sun Valley on January 23, 2012, when the Court entered Summary Judgment against my claims herein on or about January 12, 2015.

4. From June 2008 to January 19, 2012, I was the City Administrator of Sun Valley

5. I am married to James R. Donoval ("Mr. Donoval"), a licensed attorney in Idaho, having been sworn-in to the Idaho State Bar in October 2009, and who is still licensed to practice law in Illinois, having practiced law in Illinois since 1988.

6. In May of 2008, I was provided a draft Employment Agreement by Sun Valley which was drafted by former Sun Valley City Attorney Rand Peebles.

7. When I was provided the already drafted Employment Agreement by Sun Valley, I sought and received legal advice from Mr. Donoval related to the terms and conditions of the Employment Agreement.

8. During my tenure as a municipal attorney and as a local government manager in Illinois, which is where I was still located when I was negotiating the Employment Agreement, I was made aware of various statutes and regulations, one of which was Illinois Regulation Section 2950.45 related to whether an employee who receives "severance" benefits is entitled to collect unemployment benefits, which defined "severance pay" as remuneration for past service rendered to an employer. Attached as Exhibit 1 is a copy of Regulation 2950.45 to which I am referring. Therefore I did not consider the phrase "severance pay" as described in Section 3.A. of

the Employment Agreement (the "Severance Clause") to be considered as anything other than as settlement for any past services rendered or wages or employee benefits that may be due. I certainly did not consider "severance" to in any way be payment in resolution of any non wage or employee benefit claims, including claims I may have under the IPPEA, I may have had against Sun Valley should I ever be terminated "without cause".

9. In reviewing the Severance Clause, and in particular the phraseology of "severance pay", "severance payments" and "all claims and damages of any kind arising from a termination", both Mr. Donoval and I agreed that such phraseology clearly meant that any payments I would receive should I ever be terminated by Sun Valley "without cause" pursuant to the Severance Clause, was intended to compensate me for past services rendered, and did not include that I would be barred from thereafter bringing any non performance, service, wage or employee benefit related causes of action against Sun Valley or its officials, should they arise, including any claims against Sun Valley and its officials related to the IPPEA.

10. Because both Mr. Donoval and I agreed that the phrase "severance pay", "severance payments" and "all claims and damages of any kind arising from a termination" in the Severance Clause only included payment for past services I rendered to Sun Valley as the Sun Valley City Administrator, or any employee benefits I had accrued by that date such as vacation pay, and that such phraseology did not bar any claims unrelated to my performance, services, wages or employee benefits, including any potential future claims under the IPPEA, neither Mr. Donoval nor I requested that Sun Valley further define what was meant by the phrases "severance pay", "severance payments" or "all claims arising from a termination", when I formally signed the Employment Agreement and entered into a contractual relationship with Sun Valley in June of 2008.

11. Had there been any question at the time the Employment Agreement was entered into that I would be barred from bringing any non service, performance, wage or employee benefit claims against Sun Valley and its officials, should I be terminated "without cause" by Sun Valley, including in particular any claims pursuant to the IPPEA, I would have demanded such limiting language be added to the Employment Agreement before I signed the Employment Agreement.

12. There is no question in my mind that when I entered into the Employment Agreement with Sun Valley in June of 2008, that former Sun Valley Mayor Wayne Willich and I had a clear meeting of the minds that the phrases "severance pay, "severance payments" or "all claims and damages of any kind arising from a termination" only related to past services, performance, wages and employee benefits, and that such phraseology did not bar me from bringing any non performance, service, wage or employee benefit claims against Sun Valley or its officials, including claims under the IPPEA, if I was ever to be terminated by Sun Valley "without cause". Any finding by the Court otherwise is simply a replacement of the Court's intent for what mine and former Sun Valley Mayor Wayne Willich's intent was at the time the Employment Agreement was entered into.

13. Beginning in November 2011, Mr. Donoval also represented me in various matters associated with legal disputes between myself, Sun Valley, and various Sun Valley officials and employees, and in particular in regards to my termination as the Sun Valley City Administrator "without cause" pursuant to the Severance Clause on January 19, 2012, and in regards to negotiations of payment of the "severance pay" I was entitled to pursuant to the Severance Clause of the Employment Agreement.

14. Prior to my termination by Sun Valley “without cause” pursuant to the Severance Clause of the Employment Agreement on January 19, 2012, at my direction and with my knowledge, Mr. Donoval submitted at least three separate communications to Sun Valley’s attorney Kirtlan Naylor (“Mr. Naylor”), specifically confirming that should Sun Valley terminate me, as had been threatened, that I would not be releasing any non performance, service, wage or employee benefit related claims against Sun Valley and its officials, including any constitutional or retaliation related types of claims, including specifically any claims under the IPPEA, even if Sun Valley paid the “severance pay” I was entitled to the Severance Clause of the Employment Agreement.

15. On January 19, 2012, I was terminated “without cause” by Sun Valley pursuant to the Severance Clause of the Employment Agreement.

16. On January 20, 2012, I signed a “Release Pursuant To City Administrator Employment Agreement” (the “Original Hammer Release”) which Mr. Donoval drafted and witnessed, and which Mr. Donoval served on Sun Valley on January 20, 2015, along with a letter I drafted with Mr. Donoval’s assistance of the same date. Attached as Exhibit 2 is a true and correct copy of the letter and the Original Hammer Release which Mr. Donoval served on Sun Valley on January 20, 2012.

17. Attached as Exhibit 3 is a true and correct copy of an email and a “Release Pursuant To City Administrator Agreement” that Mr. Naylor had provided to Mr. Donoval on January 21, 2012 (the “Proposed Sun Valley Release”) which included unconditional language that Mr. Naylor was demanding that I include in any release I needed to sign in order to receive the “severance pay” under the Severance Clause of the Employment Agreement, namely, “I

release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City Of Sun Valley.”

18. Upon receipt of the January 21, 2012 email and the Proposed Sun Valley Release from Mr. Naylor, I discussed the matter with Mr. Donoval, and we both agreed that because the Severance Clause of the Employment Agreement referred to “severance” payments, and that “severance” payments only applied to past services that I had rendered to Sun Valley as the Sun Valley City Administrator, that I was entitled to receive the full amount of “severance” payments pursuant to the Severance Clause of the Employment Agreement, without being required to waive any other claims that I possessed against Sun Valley and its officials, including in regards to the IPPEA, as had been demanded by Mr. Naylor in his emails and as was described in the Proposed Sun Valley Release.

19. Even though Sun Valley has asserted that I only possessed two options, namely, to sign the Proposed Sun Valley Release and receive the “severance pay” described in the Severance Clause of the Employment Agreement, or not sign the Proposed Sun Valley Release and not receive the “severance pay” I was entitled to under the Severance Clause of the Employment Agreement – both I and Mr. Donoval rejected that assertion by Mr. Naylor and Sun Valley. Instead, both I and Mr. Donoval agreed that the third option was that I was legally entitled to submit a release to Sun Valley which did not waive “all” claims, but only claims that I had foreseen as being waived should I be terminated when I entered into the Employment Agreement in June of 2008, which did not include the IPPEA claim, and still be entitled to receive the “severance” pay.

20. In my prior Affidavit, when I stated that “In order to secure my immediate security, I was forced to sign release of claims that was acceptable to the City.”, as is quoted in

the Court's Summary Judgment Decision, I was merely reflecting the two options that Sun Valley was asserting that I was facing at that time. The Court should note that I rejected Mr. Naylor's and Sun Valley's demands and did not sign the Proposed Sun Valley Release as Sun Valley was demanding. I assert that I selected a third option, by notifying Sun Valley that I was demanding that I be paid the "severance" payment that I was entitled to for past performance, service, wage and employee benefits, and that I was still retaining any other claims against Sun Valley and its officials, including any IPPEA claims.

21. On January 22, I directed Mr. Donoval to notify Mr. Naylor and Sun Valley that I was refusing to sign the Proposed Sun Valley Release submitted to me by Mr. Naylor, and instead that I would be submitting a separate release of my choosing to Sun Valley.

22. During January 22, 2012 and January 23, 2012, Mr. Donoval drafted the Supplemental Hammer Release and discussed the matter with me.

23. The phrase in the Supplemental Hammer Release which asserts that I was only releasing claims that were "intended when the City Administrator Agreement was entered into on June 1, 2008" (the "Conditional Clause"), was specifically placed in the Supplemental Hammer Release to provide notice to Sun Valley that I was refusing to enter the unconditional language of "I release all claims against the City Of Sun Valley" that had been demanded by Mr. Naylor, into any release I would sign, and to indicate that I was not agreeing to release any non performance, service, wage or employee benefit related claims in return for receiving the "severance pay" under the Severance Clause of the Employment Agreement, including any claims under the IPPEA, as Mr. Naylor had already been adequately informed of.

24. On January 23, 2012, I signed the Supplemental Hammer Release in Mr. Donoval's presence.

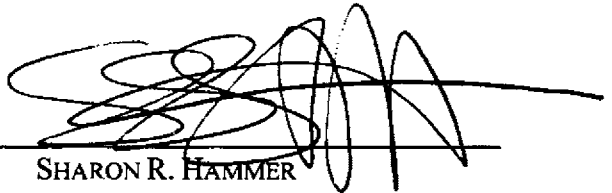
25. On January 24, 2012, Mr. Donoval's and my checking account at Chase Bank received a direct deposit from Sun Valley for the "severance" balance due to me pursuant to the Severance Clause of the Employment Agreement in the sum of \$66,935.53.

26. Between my signing of the Supplemental Hammer Release on January 23, 2012 and the deposit of the "severance" balance paid to myself on January 24, 2012 by direct deposit into our bank account, I received no communications from Mr. Naylor or any other Sun Valley employee or official, seeking to clarify or amend the language in the Supplemental Hammer Release, or placing any other further conditions upon my receiving the "severance pay" due to me pursuant to Severance Clause of the Employment Agreement on January 24, 2012.

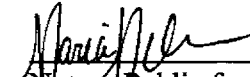
27. Based on the prior communications between Mr. Donoval, myself, Mr. Naylor and Sun Valley, and the notice to Mr. Naylor that I was rejecting the unconditional language of "I release all claims against the city Of Sun Valley" in any written release I would be submitting before Sun Valley would pay me the "severance pay" I was entitled to pursuant to the Severance Clause of the Employment Agreement, I believe that Mr. Naylor and Sun Valley had accepted my conditions that I was entitle to "severance" pay pursuant to the Severance Clause of the Employment Agreement without having to release any claims associated with the IPPEA, and thereafter paid pursuant to such condition.

28. Attached as Exhibit 4 is a true and accurate copy of the Form W-2 I received from Sun Valley at the end of 2012, which indicates that the entire amount of "severance" pay I received from Sun Valley was considered by Sun Valley to be taxable "wages" and had been withheld on for both income and employment tax purposes.

FURTHER AFFIANT SAYETH NAUGHT.


SHARON R. HAMMER

SUBSCRIBED AND SWORN to before me this 26th day of January, 2015.


Notary Public for Idaho
My Commission expires 9/24/20

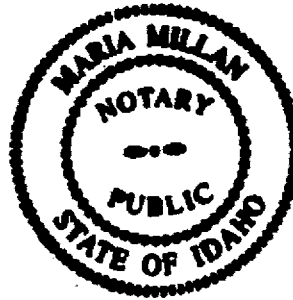


EXHIBIT A

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, without cause, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "cause", then Employer shall not be obligated to make any severance payment to Employee. "Cause" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee shall not be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, AND reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | | |
|-----|--------------------------|---|
| (1) | Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) | Employee:
[Temporary] | 360 W. Illinois St.
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion

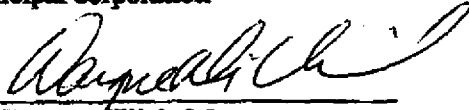
thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.


IN WITNESS WHEREOF, the City of Sun Valley has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, as of the date and year first above written.

EMPLOYER

EMPLOYEE

CITY OF SUN VALLEY, a
municipal corporation

By: 
Wayne Willich, Mayor


Sharon R. Hammer

ATTEST:

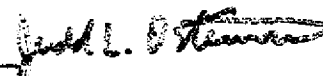
KELLY EK By: 
City Clerk

EXHIBIT B

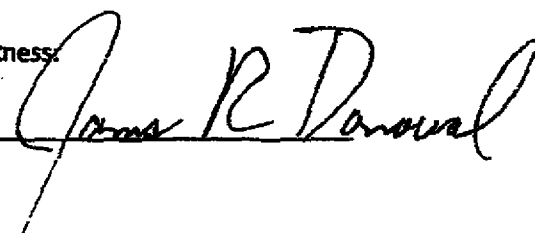
SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to Section 3.A. of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A. of the City Administrator Employment Agreement as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.


SHARON R. HAMMER

1/23/12
DATE:

Witness:



000359¹

EXHIBIT 1

§2920.45. Severance Pay

- a) Amounts paid or payable to an individual for past services rendered by the individual to an employer or amounts paid or payable to an individual for pension or seniority rights lost upon separation or layoff shall be considered severance pay. Such pay shall not be considered wages payable or attributable with respect to the period subsequent to the individual's separation or layoff. Amounts paid or payable to the individual as severance pay shall not render the individual ineligible to receive benefits under Section 2920.5. The nature and purpose of such payments, rather than their characterization, shall determine whether or not such payments are considered severance pay under this Section.

- b) For the purpose of this Section, the status of payments as severance pay is not altered by the fact that:
 - 1) Such payments are voluntary; or that,

 - 2) Such payments are made periodically rather than in the form of a lump sum.

- A) Example 1: An employer's separation pay program provides for a lump sum payment based on the length of service. The purpose of the payment is to allow the individual to maintain his standard of living while he seeks other work. The individual performs no services after his date of separation. This lump sum payment constitutes severance pay under this Section and hence is not disqualifying.

- B) Example 2: The individual was notified that he was to be terminated from employment on April 17. The individual worked on the employer's premises until April 6 but performed incidental services to the employer from April 6 through April 17 by telephone in training a replacement. The wages received from April 6 through April 17 are not severance pay. Because the individual performed some services and received wages for the period April 6 through April 17, he was not unemployed under Section 239 of the Act and hence not eligible for benefits under the Act.

EXHIBIT 2

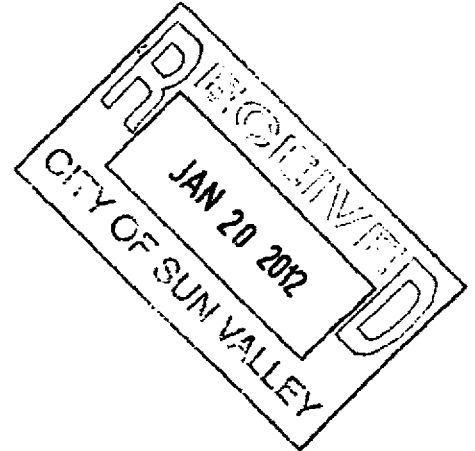
SHARON R. HAMMER

4325 Fairway Nine Condos
PO Box 1499
Sun Valley, ID 83353
(312) 965-0245
sharonhammer@aol.com

January 20, 2012

City Of Sun Valley
c/o City Clerk Kelly Ek
Sun Valley City Hall
Sun Valley, ID 83353

Via Hand Delivery



Sharon R. Hammer – 48 Hour Severance Payment Demand Pursuant To Idaho Statute 45-606

City Of Sun Valley:

At approximately 5:30 p.m. on Thursday, January 19, 2012, the Sun Valley City Council, at the request of Mayor DeWayne Briscoe, terminated the existing City Administrator Employment Agreement (the "Agreement") between me and the City Of Sun Valley, pursuant to Section 3A of such Agreement. Therefore, I am requesting payment of all wages and compensation due within 48 hours, or by 10:00 a.m. Tuesday, January 24, 2012, as is required by Idaho Statutes 45-606.

Wages and compensation are as follows:

- a) Pursuant to Section 3A of the Agreement, I am demanding payment for six months of compensation;
- b) I am demanding payment of four days of salary for the period of January 16, 2012 through January 19, 2012, the date of termination of the Agreement, or the equivalent of \$1,858.88, at my current pay rate of \$58.09 per hour;
- c) I am demanding payment of 188.88 hours of accrued vacation, as is detailed on my payroll records, equaling \$10,972.04, at my current pay rate of \$58.09 per hour;
- d) I am demanding payment for 40 hours of vacation time I was mandated to request during the pay period ending December 18, 2011, because Mayor Willich instructed me to submit a request for vacation during the "administrative leave" period. The amount for this 40 hours equals \$2,323.60 at my current pay rate of \$58.09 per hour;

000643

e) I am demanding payment for 120 hours of sabbatical vacation time I earned in June 2011. The sabbatical time was never reflected in my vacation accrual by Ms. Frostenson. On at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), I have provided notice that Ms. Frostenson shorted my vacation account by the 120 hours, and my vacation accrual account has not been corrected. I am demanding payment of \$6,907.80 for the 120 hours of non-accrued sabbatical vacation time at my current pay rate of \$58.09 per hour;

f) I am demanding payment for \$1,642 that Ms. Frostenson shorted my ICMA-RC retirement account in January 2010 when the initial deposit was made. On at least two separate occasions (to Patti Ball and to Mayor Willich and the Sun Valley City Council), I have provided a detailed accounting of the amounts withheld from my pay and not deposited into my ICMA-RC retirement account totaling \$1,642. I have not been paid this shortage or been provided an explanation as to why the shortage occurred. I am demanding payment of the \$1,642 retirement fund shortage.

I am demanding that all funds described herein be made by direct deposit in my Chase Bank Account No. (1110019465024) (see attached void check) as has been the practice of payment for wages, by 10:00 a.m. Tuesday, January 24, 2012. If such is not done, I consider the City Of Sun Valley to be in violation of the 48 hour payment requirement of Idaho Statutes 45-606. Should the City Of Sun Valley not make the payment demanded, or at least full payment of any non-disputed balances due pursuant to Idaho Statutes 45-611, then the City Of Sun Valley shall be subject to payment for treble damages, attorney's fees and costs pursuant to Idaho Statutes 45-615. Should the City Of Sun Valley dispute the balances demanded, I demand a written explanation for each category of compensation the City Of Sun Valley is disputing and a detail of the basis of the calculation of any undisputed balances actually paid.

I am demanding that all payments be in "gross", without any withholding for taxes, or any other employee related withholdings, as the payments are a "lump sum" payment related to the termination of the Agreement. Should any withholdings be made, they are specifically being done without my authority or approval, and I consider those to also be done in violation of Idaho Statute 45-606. The City Of Sun Valley will have then made a unilateral determination of withholdings from my separation without my approval. I certify that I will take responsibility for any and all taxes or employment related obligations associated with the payments demanded.

Finally, I have attached a Release Pursuant To City Administrator Employment Agreement which complies with the specific language of the Agreement. Should the City Of Sun Valley fail to make payment of the balances demanded by 10:00 a.m. Tuesday, January 24, 2012 due to any matters related to signing a release, I will consider the City Of Sun Valley to be in violation of Idaho Statutes 45-606.

Cordially,



SHARON R. HAMMER

0006064

RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

The City Administrator Employment Agreement dated June 1, 2008 between the City Of Sun Valley and Sharon R. Hammer, prepared by then Sun Valley City Attorney Rand Peebles, states as follows:.

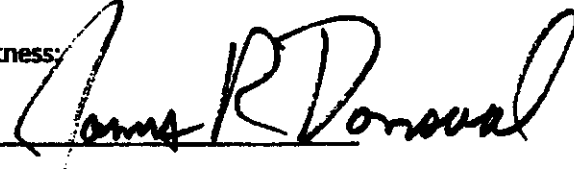
"The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims of damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause."

Therefore, pursuant to the language of the City Administrator Employment Agreement, I state as follows:

"I release all claims of damages of any kind arising from the termination of the City Administrator Employment Agreement by the City Of Sun Valley on January 19, 2011 and for any damages against the City Of Sun Valley arising from a termination without cause".


SHARON R. HAMMER

Witness:


James R. Donoval

0006465

EXHIBIT 3

RE: Lump Sum payment

<http://mail.aol.com/35478-211/aol-6/en-us/mail/PrintMessage>

From: Kirtlan Naylor <kirt@naylorheales.com>

To: Kirtlan Naylor <kirt@naylorheales.com>; jdonoval <jdonoval@aol.com>

Subject: RE: Lump Sum payment

Date: Sat, Jan 21, 2012 4:03 pm

Attachments: Release.pdf (42K)

Jim,

Also, the limiting language is part of the agreement she signed. So, when it says, "receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley," in essence, the lump sum isn't due until that condition has been met.

You quoted the rest of the paragraph, it seems that to quote the rest is exactly what should be done.

I have attached the acceptable release. If it is not received by 1:00pm Monday, payment will not be able to be made by direct deposit.

(also, your release references January 2011)



Kirt Naylor
208.947.2070

000665

RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

The City Administrator Employment Agreement dated June 1, 2008 between the City of Sun Valley and Sharon R. Hammer, and as extended by the Extension dated September 17, 2009, states as follows:

The severance payment herein is intended to be the Employee's sole exclusive remedy for any and all claims for damages of any kind arising from a termination without cause and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties tot his Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination without cause. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley.

Therefore, pursuant to the language of the City Administrator Employment Agreement, I state as follows:

"I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City of Sun Valley."

Dated this ____ of January , 2012.

Sharon R. Hammer

James Donoval, Witness

000666

EXHIBIT 4

Employee's social security number [REDACTED]		OMB No. 1545-0008				This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.	
b Employer identification number (EIN) 82-0294056			1 Wages, tips, other compensation 94163.25		2 Federal income tax withheld 10352.02		
c Employer's name, address, and ZIP code CITY OF SUN VALLEY PO BOX 416 SUN VALLEY ID 83353			3 Social security wages 95447.39		4 Social security tax withheld 4008.79		
			5 Medicare wages and tips 95447.39		6 Medicare tax withheld 1383.98		
			7 Social security tips		8 Allocated tips		
d Control number 20011			9		10 Dependent care benefits		
e Employee's name, address, and ZIP code SHARON R HAMMER PO BOX 1499 SUN VALLEY ID 83353			11 Nonqualified plans		12a See instructions for box 12 G 559.26		
			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b		
			14 Other PERSI 724.88		12c		
					12d		
15 State Employer's state ID number ID 000059844-W		16 State wages, tips, etc. 94163.25		17 State income tax 3275.11		18 Local wages, tips, etc.	
						19 Local income tax	
						20 Locality name	

Form **W-2** Wage and Tax Statement

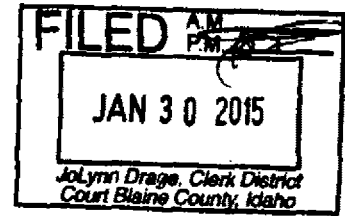
2012

Department of the Treasury—Internal Revenue Service

Copy C—For EMPLOYEE'S RECORDS (See Notice to Employee on the back of Copy B.)

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Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**AFFIDAVIT OF WAYNE WILlich
IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION**

STATE OF IDAHO)
 : ss.
County of Blaine)

I, Wayne Willich, being first duly sworn upon oath, depose and state as follows:

1. I have personal knowledge of the facts contained herein and if called upon to testify about the same, I could do so competently.

2. From January of 2008 until January 3, 2012, I was the duly elected Mayor of Sun Valley, Idaho.

3. I am submitting this Affidavit to correct the Court's misunderstanding of the facts, circumstances and my intent related to my entering into a contractual relationship with Sharon R. Hammer ("Ms. Hammer") as the former Mayor Of Sun Valley by signing the City Administrator Employment Agreement (the "Employment Agreement") in June of 2008 (attached as Ex. A herein).

4. In May of 2008, Sun Valley forwarded to Ms. Hammer a draft Employment Agreement, which was drafted by former Sun Valley City Attorney Rand Peebles, which I reviewed.

5. In reviewing Section 3.A of the Employment Agreement, and in particular the phraseology of "severance" and "in regards to termination", I believed that such phraseology clearly meant that any payments Ms. Hammer would receive should she ever be terminated by Sun Valley "without cause" pursuant to section 3.A of the Employment Agreement, was intended to compensate Ms. Hammer for past services rendered, and did not include that Ms. Hammer would be barred from thereafter bringing any non performance, service, wage or employee benefit related causes of action against Sun Valley or its officials, should they arise, including any claims against Sun Valley and its officials related to claims pursuant to the IPPEA.

6. I believed that the phrase "severance" and "in regards to termination" in Section 3.A of the Employment Agreement only included payment for past services Ms. Hammer rendered to Sun Valley as the Sun Valley City Administrator, or any employee benefits Ms. Hammer had accrued, and that such phraseology did not bar any claims unrelated to Ms. Hammer's performance, services, wages or employee benefits, including any potential future claims under the IPPEA, which was my clear intent in entering into the Employment Agreement with Ms. Hammer. Therefore, I did not request that the Employment Agreement be further

AFFIDAVIT OF WAYNE WILLICH IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION - 2

(WU)

modified to define what was meant by “severance” or “in regards to termination”, when I formally signed the Employment Agreement and entered into a contractual relationship with Ms. Hammer on behalf of Sun Valley in June of 2008.

7. Had there been any question at the time the Employment Agreement was entered into that Ms. Hammer would be barred from bringing any non service, performance, wage or employee benefit claims against Sun Valley and its officials, should she be terminated “without cause”, including in particular any claims pursuant to the IPPEA, I would have added such language to the Employment Agreement to ensure that Ms. Hammer would not be barred from bringing such non wage related claims should she ever be terminated and seek and obtain the “severance”.

8. The Court’s finding in its recent ruling that because I stated in a prior Affidavit that Ms. Hammer and I did not specifically discuss the intent of what the phrase “severance” and “in regards to termination” in Section 3.A. of the Employment Agreement meant that Ms. Hammer was barred from making further non performance, service, wage or employee benefit claims against Sun Valley or Sun Valley officials should Ms. Hammer be terminated “without cause”, is a total misunderstanding of what I meant in the Affidavit, and is taken out of context, as the phrase “severance” so clearly only meant to me to define service or performance related compensation, that it need not be further defined by myself or Ms. Hammer, and therefore did not need to be discussed.

9. There is no question in my mind that when I entered into the Employment Agreement with Ms. Hammer in June of 2008 on behalf of Sun Valley, that I and Ms. Hammer had a clear meeting of the minds that the phrases “severance” and “in regards to termination” only related to past services, performance, wages and employee benefits, and that such



phraseology did not bar Ms. Hammer from bringing any non performance, service, wage or employee benefit claims against Sun Valley or its officials, including claims under the IPPEA, if she would ever be terminated by Sun Valley "without cause".

10. During my thirty (30) or so years as a fairly high level executive with the The Boeing Company, it was well understood by myself and within The Boeing Company as a whole that any "severance" pay that was included in a separation agreement with an employee was limited to performance related compensation. In my experience, it was set up that way specifically to prevent a corporation with great resources from holding employees hostage in paying compensation owed to terminated employees by pressuring them into dropping serious charges against management. One particular instance which was on my mind, at the time I entered into the Employment Agreement with Ms. Hammer, and affected my perspective of the issue, involved a female Boeing Company employee who had alleged that she was sexually harassed by a Boeing Company manager. She was provided her "severance" by The Boeing Company when she left the company, and was still entitled to pursue civil charges against The Boeing Company manager.

11. Any finding by the Court that I or Ms. Hammer believed that Ms. Hammer's "severance" described in Section 3.A. of the Employment Agreement was anything other than compensation described for her past performance should she ever be terminated by Sun Valley "without cause" is simply a replacement of the Court's intent for what mine and Ms. Hammer's intent was at the time the Employment Agreement was entered into.



FURTHER AFFIANT SAYETH NAUGHT.



WAYNE WILlich

SUBSCRIBED AND SWORN to before me this 23rd day of January, 2015.



Notary Public for Idaho

My Commission expires 09/27/2018

GARY W. BROWER
NOTARY PUBLIC
STATE OF IDAHO

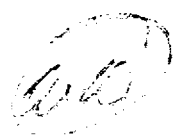


EXHIBIT A

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT hereinafter "Agreement", effective the 1st day of June 2008, by and between the CITY OF SUN VALLEY, State of Idaho, a municipal corporation, hereinafter called "Employer", and SHARON R. HAMMER hereinafter called "Employee" is made in contemplation of the following:

RECITALS

WHEREAS, Employer desires to employ the services of said Employee as City Administrator of the City of Sun Valley ("City"); and

WHEREAS, Employee desires to accept employment as City Administrator of City pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and the above Recitals which are incorporated herein, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Employee as City Administrator of the City of Sun Valley to perform the duties customarily performed by City Administrators and which Employer, through the Mayor, shall from time to time assign. Employee shall perform such duties thoroughly, competently and with the highest level of professionalism as would be expected of a city administrator with Employee's background, qualifications and experience.

SECTION 2. EMPLOYMENT

A. Employee's Employment shall commence June 1, 2008. Employee shall report to work no later than June 23, 2008.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee under the applicable provisions of Section 3 below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the notice provision set forth in Section 3, Subsection C, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Employer, acting through the Mayor, may terminate Employee's employment, **without cause**, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as severance pay, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The severance payment herein is intended to be Employee's **sole exclusive remedy** for any and all claims for damages of any kind arising from a termination **without cause** and such severance payment is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employer arising from a termination **without cause**. Consequently, receipt of the severance payment is subject to execution of a release of all claims against the City of Sun Valley. A termination **without cause** shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual").

B. In the event Employee is terminated for "**cause**", then Employer shall not be obligated to make any severance payment to Employee. "**Cause**" is defined as (i) a material breach of this Agreement; (ii) repeated neglect of Employee's duties as City Administrator; or (iii) misconduct such as theft, dishonesty, fraud, misrepresentation, embezzlement or other acts of willful misconduct, moral turpitude or criminal conduct.

C. Unless the parties otherwise agree, if Employee voluntarily resigns her position with Employer, then Employee shall give Employer three (3) months notice in advance; provided Employer may waive such three month advance notice in its discretion. In the event of a voluntary resignation, Employee shall not be entitled to any severance payment unless the Mayor shall decide otherwise in his sole discretion.

If Employee applies for employment elsewhere, and during the term of her employment hereunder is included in a list of ten or fewer candidates still under consideration for such employment, then, upon learning of her inclusion in such a list, Employee shall promptly inform the Mayor and each member of the City Council, which shall be confidential insofar as is permitted by applicable law.

D. In the event Employee is terminated by Employer, acting through the Mayor, for any reason, then Employer shall pay Employee, at the rate of compensation then being earned by Employee, all accrued and unused vacation entitlement in accordance with the then current policy for City Department Heads.

SECTION 4. DISABILITY

Unless otherwise required by law, if employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 3, Subsection A. However, Employee shall be compensated for any sick leave, vacation, holidays, compensatory time and other benefits accrued at the time Employee became disabled in accordance with Personnel Manual provisions which are applicable to management employees, AND reduced by the Disability payments received for the preceding twelve (12) months. If Employee suffers any permanent disability or is otherwise unable to perform her duties then sick leave, vacation, holidays, compensatory time, and other benefits shall cease to accrue at that time.

SECTION 5. COMPENSATION

A. Employer agrees to pay Employee for her services a salary (hereinafter "Base Salary") at the rate of One Hundred Ten Thousand Dollars (\$110,000.00), per year, payable in equal installments at the same time as other employees of the Employer are paid.

B. Employer shall match, not to exceed to five percent (5%) of Employee's base salary of Section A, contributions made by Employee to a 457 Plan.

C. Except as otherwise specifically provided in this Agreement, Employee shall receive the general employment benefits, including medical plan coverage, in the same amount and to the same extent as Employer grants to Department Heads.

D. During the course of Employee's term of employment, Employer will pay into the Public Employees' Retirement System of Idaho ("PERSI"), for the account of Employee, in accordance with the policy established by Employer for all employees of Employer generally.

E. Employer shall provide Employee a housing allowance of \$1,000.00 per month.

SECTION 6. SICK LEAVE AND VACATION

A. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours of sick leave and thereafter shall accrue sick leave at the same rate as City Department Heads employed by the City.

B. The leave entitlement granted to Employee pursuant to Subsection A of this Section 6 shall be used by Employee for time attributable to recovery from an illness or injury only and not as additional vacation time. If such sick leave is not used, it shall continue

to accrue, except that such entitlement shall not accrue beyond the maximum accrual limits established for City Department Heads in respect to the same entitlement. Upon termination of this Agreement Employee shall not be entitled to be paid for any accrued but unused leave time.

C. Upon commencement of employment, Employee shall have credited to her personal account forty (40) hours paid vacation leave and thereafter shall accrue vacation leave at the rate of one hundred-sixty (160) hours per year. Vacation accrual and use shall follow the procedures set forth in the Personnel Manual.

SECTION 7. PERFORMANCE EVALUATION

A. The Mayor shall review and evaluate the performance of the Employee at least once annually for consideration of a compensation increase. Further, the Mayor shall provide the Employee with a summary written statement of the evaluation.

B. Annually, the Mayor and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Employer's policy objectives and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be in writing, and shall generally be attainable within the time limitations as specified and the annual operating and capital budgets.

SECTION 8. GENERAL EXPENSES AND MEMBERSHIPS

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee from time to time, and hereby agrees to reimburse or to pay actual expenses in accordance with the travel and other policies of the Employer.

B. Employer shall pay the membership fees to the International City Management Association on behalf of Employee.

C. Employer shall reimburse Employee's direct expenses for relocating to the Wood River Valley, as substantiated by receipts, up to \$15,000.00.

SECTION 9. INDEMNIFICATION

Consistent with Idaho Code § 6-903, City agrees to indemnify and hold harmless Employee from claims, liabilities, or causes of action brought against Employee which are related to the course and scope of Employee's employment or which arise out of any act or omission within the course and scope of Employee's employment; provided, the City may refuse a defense or disavow and refuse to pay any judgment for Employee if it is

determined that such act or omission of the Employee was not within the course and scope of her employment or included malice or criminal intent.

SECTION 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Mayor, in consultation with the Employee, shall fix such other terms and conditions of employment, as he may determine from time to time to be appropriate, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

B. Except as herein specifically provided, all provisions of the Personnel Manual and regulations and rules of the Employer relating to vacation and sick leave, retirement contributions, holidays and other benefits which now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer.

SECTION 11. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be provided by written notice by a party:

- | | |
|------------------------------|---|
| (1) Employer: | Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353 |
| (2) Employee:
[Temporary] | 360 W. Illinois St.
#3F
Chicago, IL 60610 |

Alternatively, notices required pursuant to this Agreement may be personally served by hand delivery. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 12. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion

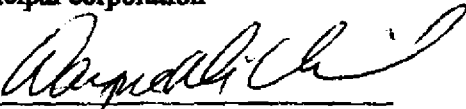
thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

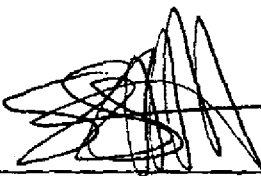
IN WITNESS WHEREOF, the City of Sun Valley has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, as of the date and year first above written.

EMPLOYER

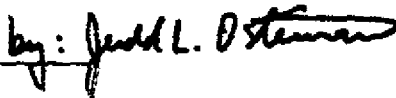
EMPLOYEE

CITY OF SUN VALLEY, a
municipal corporation

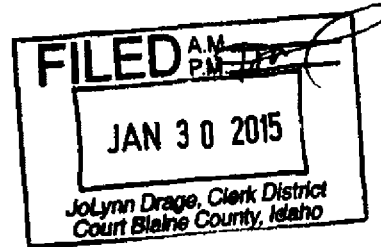
By: 
Wayne Willich, Mayor


Sharon R. Hammer

ATTEST:

KELLY EK by: 
City Clerk

James R. Donoval
4110 Eaton Ave., Suite D
Caldwell, ID 83607
Ph: (312) 859-2029
Fax: (208) 649-1603
Idaho Atty No. 8142
jdonoval@aol.com



Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

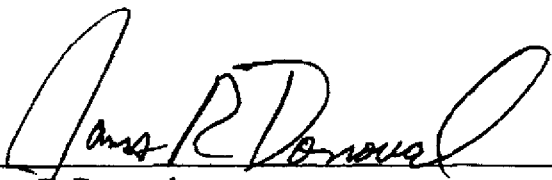
CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

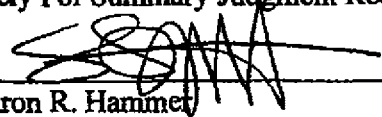
Defendants.

Case No. CV-2012-479

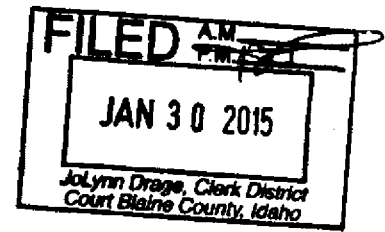
**ASSOCIATED APPEARANCE OF
ATTORNEY JAMES R. DONOVAL FOR
RECONSIDERATION OF ENTRY OF
SUMMARY JUDGMENT PURPOSES
ONLY**

NOW COMES James R. Donoval, and on behalf of the Plaintiff Sharon R. Hammer,
enters his Associated Appearance For Reconsideration Of Entry Of Summary Judgment
Purposes Only.


James R. Donoval
Associated Counsel For Ms. Hammer
Solely For Summary Judgment Reconsideration Purposes


Sharon R. Hammer
Plaintiff

James R. Donoval
4110 Eaton Ave., Suite D
Caldwell, ID 83607
Ph: (312) 859-2029
Fax: (208) 649-1603
Idaho Atty No. 8142
jdonoval@aol.com



Associated Attorney for Plaintiff Sharon R. Hammer

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**FACTS IN SUPPORT OF MOTION FOR
RECONSIDERATION OF ENTRY OF
SUMMARY JUDGMENT**

A) THE EMPLOYMENT AGREEMENT AND THE DEFINITION OF "SEVERANCE"

The relevant section of the City Administrator Employment Agreement that Plaintiff Sharon R. Hammer ("Ms. Hammer") and Defendant The City Of Sun Valley ("Sun Valley") entered into in June of 2008 (the "Employment Agreement") (Hammer Rehearing Aff., Ex. A) related to the "severance" payments Ms. Hammer would be entitled to receive should she ever be terminated "without cause" by Sun Valley (the "Severance Clause"), is as follows:

SECTION 3. TERMINATION AND SEVERANCE PAY (emphasis added)

A. Employer acting through the Mayor, may terminate Employee's employment, without cause, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as **severance pay** (emphasis added), a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The **severance payment** (emphasis added) herein is intended to be the Employee's sole exclusive remedy for any and all claims and damages of any kind **arising from a termination** (emphasis added) without cause and such **severance payment** (emphasis added) is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employee arising from a termination without cause. Consequently, receipt of the **severance payment** (emphasis added) is subject to the execution of a release⁴ of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual"). (see Hammer Rehearing Aff., Ex. A)

a) Ms. Hammer's Interpretation Of What The Severance Clause Meant

In May of 2008, Ms. Hammer was provided the draft of the Employment Agreement that had been prepared by then Sun Valley City Attorney Rand Peebles. (Hammer Rehearing Aff. Para. 7)

During Ms. Hammer's tenure as a municipal attorney and as a local government manager in Illinois, which is where Ms. Hammer was still located when Ms. Hammer negotiated the Employment Agreement, Ms. Hammer was aware of various statutes and regulations, which define the common meaning of "severance" as being related to "wages" for "services rendered", one of which is *Illinois Regulation Section 2950.45* related to whether an employee who receives "severance" benefits is entitled to collect unemployment benefits, and which defines "severance pay" as remuneration for past service rendered to an employer. (Hammer Rehearing Aff. Para. 8)

Mr. Donoval provided legal advice to Ms. Hammer related to the terms and conditions of the Employment Agreement. (Donoval Rehearing Aff. Para. 6) (Hammer Rehearing Aff. Para. 7) Besides being an attorney, Mr. Donoval is also a former Certified Public Accountant, having been licensed as a CPA in Illinois for several years during the 1990s. (Donoval Rehearing Aff.

⁴ It is not inconsequential that there was no sample "release" attached to the Employment Agreement drafted by then Sun Valley City Attorney Rand Peebles by which Ms. Hammer could have known exactly what it was that she was required to waive should she ever be terminated by Sun Valley "without cause" in order for Ms. Hammer to receive the "severance" described in the Severance Clause.

Para. 7) Based on his experience as a CPA, at the time the Employment Agreement was entered into, Mr. Donoval was well aware that “severance pay” is specifically defined by the Internal Revenue Service as “wages” for income and employment tax purposes⁶. (Donoval Rehearing Aff. Para. 7)

In reviewing the Severance Clause of the Employment Agreement in May of 2008, and in particular the multiple use of the phraseology of “severance pay” or “severance payment” and “all claims and damages of any kind arising from a termination”, both Ms. Hammer and Mr. Donoval agreed that such phraseology clearly meant that any payments Ms. Hammer would receive should she ever be terminated by Sun Valley “without cause” pursuant to the Severance Clause of the Employment Agreement, was intended to compensate Ms. Hammer for past services rendered, and did not include that Ms. Hammer would be barred from thereafter bringing any non performance, service, wage or employee benefit related causes of action against Sun Valley or its officials, should they arise, including any claims against Sun Valley and its officials which may have been related to the IPPEA. (Donoval Rehearing Aff. Para. 8) (Hammer Rehearing Aff. Para. 9) In particular, because of her prior experience as a municipal attorney and a local government administrator, and her understanding of the common definition of “severance” as referring to “wages” only, Ms. Hammer did not consider the phrase “severance” pay as described in the Severance Clause to be considered as anything other than as settlement for any past services rendered or wages or employee benefits that may be due. (Hammer Rehearing Aff. Para. 8) Ms. Hammer certainly did not consider “severance” to in any way be considered payment in resolution of any non wage or employee benefit claims, including

⁶ In *U.S. v. Quality Stores, Inc.*, 134 S.Ct. 1395 (U.S. Sup. Ct. 2014), the U.S. Supreme Court confirmed what the IRS had been asserting for an extended period of time against tax payers, namely, that “severance” pay was defined as “wages” for past performance of services for both income and employment tax purposes.

claims Ms. Hammer may have ever had under the IPPEA, against Sun Valley, should Ms. Hammer ever be terminated “without cause”. (Hammer Rehearing Aff. Para. 8)

In analyzing the Employment Agreement terms, both Ms. Hammer and Mr. Donoval agreed that the phrases “severance pay”, “severance payments” and “all claims and damages of any kind arising from a termination” in the Severance Clause of the Employment Agreement only included payment for past services rendered to Sun Valley by Ms. Hammer as the Sun Valley City Administrator, or any employee benefits accrued by Ms. Hammer through that date such as vacation pay, and that such phraseology did not bar any claims unrelated to Ms. Hammer’s performance, services, wages or employee benefits, including any potential future claims under the IPPEA. Therefore, neither Ms. Hammer nor Mr. Donoval requested that Sun Valley further define what was meant by the phrases “severance pay”, “severance payments”, or “all claims and damages of any kind arising from a termination”, when Ms. Hammer formally signed the Employment Agreement and entered into a contractual relationship with Sun Valley in June of 2008. (Donoval Rehearing Aff. Para. 9) (Hammer Rehearing Aff. Para. 10) Had there been any question at the time the Employment Agreement was entered into that Ms. Hammer would be barred from bringing any non service, performance, wage or employee benefit claims against Sun Valley and its officials, should Ms. Hammer be terminated “without cause” by Sun Valley, including in particular any claims pursuant to the IPPEA, Ms. Hammer certifies that she would have demanded such limiting language be added to the Employment Agreement before Ms. Hammer signed the Employment Agreement. (Hammer Rehearing Aff. Para. 11)

b) Former Mayor Willich’s Interpretation Of What The Severance Clause Meant

Former Mayor Willich has confirmed that in reviewing the Severance Clause of the Employment Agreement, and in particular the phraseology of “severance” and “in regards to

termination”, Former Mayor Willich also believed that such phraseology clearly meant that any payments Ms. Hammer would receive should she ever be terminated by Sun Valley “without cause” pursuant to the Severance Clause of the Employment Agreement, was intended to compensate Ms. Hammer for past services rendered, and did not include that Ms. Hammer would be barred from thereafter bringing any non performance, service, wage or employee benefit related causes of action against Sun Valley or its officials, should they arise, including any claims against Sun Valley and its officials related to claims pursuant to the IPPEA. (Willich Rehearing Aff. Para. 5)

Former Mayor Willich’s perception of the definition of “severance” was shaped by his thirty (30) or so years of experience as a fairly high level executive with the Boeing Company where it was well understood by both himself and within the Boeing Company that any “severance” pay that was included in an employee’s separation agreement was limited to performance related compensation. (Willich Rehearing Aff. Para. 10)⁷

In responding to the Court’s questioning in the Summary Judgment Decision of Former Mayor Willich’s admission in his prior Affidavit that he did not specifically discuss with Ms. Hammer the intent of what the phrase “severance” and “in regards to termination” in the Severance Clause of the Employment Agreement meant, Former Mayor Willich responds that the Court’s findings in the Summary Judgment Decision are a total misunderstanding of what Former Mayor Willich meant in the prior Affidavit, and is taken out of context, because to

⁷ Former Mayor Willich goes on to state in his Affidavit in regards to his history as a Boeing Company executive that “In my experience, it was set up that way specifically to prevent a corporation with great resources from holding employees hostage in paying compensation owed to terminated employees by pressuring them into dropping serious charges against management. One particular instance which was on my mind, at the time I entered into the Employment Agreement with Ms. Hammer, and affected my perspective of the issue, involved a female Boeing Company employee who had alleged that she was sexually harassed by a Boeing Company manager. She was provided her “severance” by Boeing Company when she left the company, and was still entitled to pursue civil charges against the Boeing Company manager. (Willich Rehearing Aff. Para. 10)

Former Mayor Willich the phrase “severance” so clearly only meant to define service or performance related compensation, that it needed not to be further defined by Former Mayor Willich or Ms. Hammer, and therefore did not need to be discussed. (Willich Rehearing Aff. Para. 8) Ultimately, Former Mayor Willich states that because Former Mayor Willich agreed that the phrase “severance” and “in regards to termination” in the Severance Clause of the Employment Agreement only included payments for past services Ms. Hammer rendered to Sun Valley as the Sun Valley City Administrator, or any employee benefits Ms. Hammer had accrued, and that such phraseology did not bar any claims unrelated to Ms. Hammer’s performance, services, wages or employee benefits, including any potential future claims under the IPPEA, which was Former Mayor Willich’s clear intent in entering into the Employment Agreement with Ms. Hammer on behalf of Sun Valley, Former Mayor Willich did not request that the Employment Agreement be further modified to define what was meant by “severance” or “in regards to termination”, when Former Mayor Willich formally signed the Employment Agreement and entered into a contractual relationship on behalf of Sun Valley with Ms. Hammer in June of 2008. (Willich Rehearing Aff. Para. 6)

As was the case with Ms. Hammer, Former Mayor Willich asserts that had there been any questions at the time the Employment Agreement was entered into that Ms. Hammer would be barred from bringing any non service, performance, wage or employee benefit claims against Sun Valley and its officials, should Ms. Hammer ever be terminated “without cause”, including in particular any claims pursuant to the IPPEA, Former Mayor Willich would have added such language to the Employment Agreement to ensure that Ms. Hammer would not be barred from bringing IPPEA claims if she was ever terminated “without cause” and accepted the “severance” pay. (Willich Rehearing Aff. Para. 7)

c) At The Time The Employment Agreement Was Entered Into, Ms. Hammer And Former Mayor Willich Had A Meeting Of The Minds As To What the Parameters Of The Severance Clause Were

There is no question in either Ms. Hammer's or Former Mayor Willich's minds that when they jointly entered into the Employment Agreement in June of 2008, that both Ms. Hammer and Former Mayor Willich had a clear meeting of the minds that the phrases "severance pay", "severance payments" or "all claims and damages of any kind arising from a termination" in the Severance Clause of the Employment Agreement only related to past services, performance, wages and employee benefits, and that such phraseology did not bar Ms. Hammer from bringing any non performance, service, wage or employee benefit claims against Sun Valley or its officials, including claims under the IPPEA, if Ms. Hammer was ever to be terminated by Sun Valley "without cause". (Hammer Rehearing Aff. Para. 12) (Willich Rehearing Aff. Para. 9) Both Ms. Hammer and Former Mayor Willich assert that any finding by the Court in its Summary Judgment Decision otherwise is simply a replacement of the Court's intent for what Ms. Hammer's and Former Mayor Willich's mutual intent was at the time the Employment Agreement was entered into. (Hammer Rehearing Aff. Para. 12) (Willich Rehearing Aff. Para. 11)

B) THE SUPPLEMENTAL RELEASE

On January 23, 2012, Ms. Hammer provided the Supplemental Hammer Release¹¹ at issue to Sun Valley (Hammer Rehearing Aff., Ex. B). The Supplemental Hammer Release states as follows:

SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

Upon payment of the severance payment required pursuant to section 3.A of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A of the City Administrator Employment Agreement **as were intended when the City Administrator Agreement was entered into on June 1, 2008** (emphasis added). (see Hammer Rehearing Aff., Ex. B)

a) The Pre-Termination Communications

Ms. Hammer and Mr. Donoval are married. (Donoval Rehearing Aff. Para. 3) (Hammer Rehearing Aff. Para. 4) Mr. Donoval is a licensed attorney in Idaho. (Donoval Rehearing Aff. Para. 4) (Hammer Rehearing Aff. Para. 5).

Beginning in November 2011, Mr. Donoval began representing Ms. Hammer in various matters associated with legal disputes between Ms. Hammer, Sun Valley, and various Sun Valley officials and employees, and in particular in regards to Ms. Hammer's termination as the Sun Valley City Administrator "without cause" pursuant to the Severance Clause of the Employment Agreement on January 19, 2012, and in regards to the negotiations of payment of the "severance" Ms. Hammer was entitled to pursuant to the Severance Clause. (Donoval Rehearing Aff. Para. 10) (Hammer Rehearing Aff. Para. 13)

¹¹ The Supplemental Release is described herein as the "Supplemental Hammer Release", as it is actually the final of three drafted written releases that were passed back and forth between Ms. Hammer and Sun Valley, and is the conditional release eventually accepted by Sun Valley after extensive negotiations.

On January 13, 2012, less than a week before Ms. Hammer was actually terminated, as had been made clear Sun Valley was about to do, Mr. Donoval sent Mr. Naylor an email, specifically clarifying that, if Sun Valley terminated Ms. Hammer pursuant to the “without cause” provisions of the Severance Clause that, “her contract does not require her to waive any tort or any other non contract claims she may have with the City”, and informing Mr. Naylor that if Sun Valley was going to terminate Ms. Hammer “without cause” that Mr. Naylor and Mr. Donoval should be “working on a separation agreement that has the correct waiver language in it.” (Donoval Rehearing Aff. Para. 11) (Hammer Rehearing Aff. Para. 14)

The next day, on January 14, 2012, Mr. Donoval sent Mr. Naylor another email which specifically stated that “regardless of whether you terminate her “without cause” – she has a property interest in her employment which we will immediately seek to enforce. And of course I will immediately re-file the IPPEA claims.” (Donoval Rehearing Aff. Para. 12) (Hammer Rehearing Aff. Para. 14)

On January 18, 2012, the day before Ms. Hammer was terminated, Mr. Donoval and Mr. Naylor held a telephone conversation in which Mr. Naylor told Mr. Donoval that Sun Valley would never let Ms. Hammer return as the Sun Valley City Administrator because she had sued Sun Valley City Council Member Nils Ribi and Sun Valley. (Donoval Rehearing Aff. Para. 14) In that conversation, Mr. Donoval remembers telling Mr. Naylor that even if Sun Valley terminates Ms. Hammer “without cause” that she was not required to waive any of her non service or wage types of claims against Sun Valley, including the IPPEA claims, even if she was paid her severance pay under the Severance Clause. (Donoval Rehearing Aff. Para. 14)

Immediately after the telephone call on January 18, 2012, Mr. Donoval also sent a letter to Mr. Naylor (Donoval Rehearing Aff. Para. 15) (Hammer Rehearing Aff. Para. 14) which repeated what Mr. Donoval had told Mr. Naylor on the telephone, and again, specifically stated:

“the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribb and several other claims, do not arise “from a termination”, they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement. So as I have stated, if the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.”

b) The Post Termination Communications

On January 20, 2012, the day after Ms. Hammer was terminated, Ms. Hammer signed a “Release Pursuant To City Administrator Employment Agreement” (the “Original Hammer Release”) which Mr. Donoval drafted and witnessed, and which Mr. Donoval personally served on Sun Valley the same day (Donoval Rehearing Aff. Para. 17) (Hammer Rehearing Aff. Para. 16). The Original Hammer Release merely repeated the language that was in the Severance Clause regarding Ms. Hammer’s termination “without cause”, which Mr. Donoval had explicitly told Mr. Naylor it would in the January 18, 2012 letter to Mr. Naylor. (Donoval Rehearing Aff. Para. 17) In addition, on the same day, Mr. Donoval served a letter Mr. Donoval assisted Ms. Hammer draft of the same date, (Donoval Rehearing Aff. Para. 17) (Hammer Rehearing Aff. Para. 16), which demanded that Ms. Hammer be paid the full amount of “severance” and other employee benefits she was due within forty eight (48) hours of receipt of Sun Valley’s receipt of the letter, as is required by *Idaho Statute 45-606*. (Donoval Rehearing Aff. Para. 17) (Hammer Rehearing Aff. Para. 16)

Later the same day, Mr. Donoval received an email from Mr. Naylor, rejecting the Original Hammer Release, and demanding that Ms. Hammer sign a release which specifically included the phrase “I release all claims against the City of Sun Valley” before Sun Valley would pay Ms. Hammer the “severance pay” provided for in the Severance Clause of the Employment Agreement. (Donoval Rehearing Aff. Para. 18) The next day, on January 21, 2012, Mr. Naylor sent another email to Mr. Donoval, which again mandated that Ms. Hammer provide Sun Valley a release that stated specifically stated “I release all claims against the City Of Sun Valley” or “we will not consider that she has complied with the agreement.” (Donoval Rehearing Aff. Para. 19) Finally, later in the day on January 21, 2012, Mr. Naylor sent Mr. Donoval another email, which demanded that Ms. Hammer sign a “Release Pursuant To City Administrator Employment Agreement” that Mr. Naylor had drafted (the “Proposed Sun Valley Release”), which was attached to the email. (Donoval Rehearing Aff. Para. 20) (Hammer Rehearing Aff. Para. 17) The Proposed Sun Valley Release included the unconditional language that Mr. Naylor had been demanding that Ms. Hammer include in any release she needed to sign in order to receive her “severance pay” under the Severance Clause, namely, “I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City of Sun Valley.” (Donoval Rehearing Aff. Para. 20) (Hammer Rehearing Aff. Para. 17)

That same afternoon, Mr. Donoval confirmed to Mr. Naylor that if Ms. Hammer did sign a release with any releasing language, she would only be doing so “under duress”, because Sun Valley was improperly withholding her rightful “severance” pay. (Donoval Rehearing Aff. Para. 21)

Upon receipt of the January 21, 2012 email from Mr. Naylor and the Proposed Sun Valley Release from Mr. Naylor, Mr. Donoval and Ms. Hammer discussed the demands being

made by Mr. Naylor. (Donoval Rehearing Aff. Para. 22) (Hammer Rehearing Aff. Para. 18) Mr. Donoval and Ms. Hammer both agreed that because the Severance Clause referred to “severance” payments, and that “severance” payments were “wages” which applied to past services that Ms. Hammer had rendered to Sun Valley as the Sun Valley City Administrator, that Ms. Hammer was entitled to receive the full amount of “severance” payments described in Severance Clause, without being required to waive any other claims that Ms. Hammer possessed against Sun Valley and its officials, including in regards to the IPPEA, as had been demanded by Mr. Naylor in his emails of January 20, 2012 and January 21, 2012 and as was described in the Proposed Sun Valley Release. (Donoval Rehearing Aff. Para. 22) (Hammer Rehearing Aff. Para. 18)

Ms. Hammer and Mr. Donoval agreed that Ms. Hammer was legally entitled to submit a release to Sun Valley which did not waive “all” claims, but only the wage and employee benefit related claims that Ms. Hammer had foreseen being waived should Ms. Hammer ever be terminated by Sun Valley when she entered into the Employment Agreement in June of 2008, which did not include the IPPEA claim, and still be entitled to receive her “severance” pay. (Donoval Rehearing Aff. Para. 23) (Hammer Rehearing Aff. Para. 19)

On January 22, 2012, Ms. Hammer directed that Mr. Donoval reject Mr. Naylor’s demands (Hammer Rehearing Aff. Para. 21) for an unconditional waiver of all claims in order to receive her “severance” under the Severance Clause. On January 23, 2012, Mr. Donoval sent Mr. Naylor an email, indicating that Ms. Hammer was refusing to sign the unconditional Proposed Sun Valley Release, and that Ms. Hammer would instead be submitting a release of her own drafting. (Donoval Rehearing Aff. Para. 24)

During January 22, 2012 and January 23, 2012, Mr. Donoval drafted the Supplemental Hammer Release and discussed the matter with Ms. Hammer. (Donoval Rehearing Aff. Para. 25) (Hammer Rehearing Aff. Para. 22) The Conditional Clause stating that Ms. Hammer was only releasing claims that were “intended when the City Administrator Agreement was entered into on June 1, 2008”, was specifically placed in the Supplemental Hammer Release to provide notice to Sun Valley that Ms. Hammer was refusing to enter the unconditional language of “I release all claims against the City Of Sun Valley” that had been demanded by Mr. Naylor, and to indicate to Sun Valley that Ms. Hammer was not agreeing to releasing any non performance, service, wage or employee benefit related claims in return for receiving the “severance” under the Severance Clause, including any claims under the IPPEA, as Mr. Naylor had already been adequately informed of on several occasions. (Donoval Rehearing Aff. Para. 26) (Hammer Rehearing Aff. Para. 23) On January 23, 2012, Ms. Hammer signed the Supplemental Hammer Release in Mr. Donoval’s presence. (Donoval Rehearing Aff. Para. 27) (Hammer Rehearing Aff. Para. 24) On January 23, 2012, Mr. Donoval submitted an email to Mr. Naylor and former Sun Valley Treasurer Michelle Frostenson (“Former Treasurer Frostenson”) which included the Supplemental Hammer Release. (Donoval Rehearing Aff. Para. 28)

On January 23, 2012, Mr. Donoval also personally appeared at Sun Valley City Hall intending to serve the Supplemental Hammer Release upon Sun Valley Mayor DeWayne Briscoe, who was not present in Sun Valley City Hall when Mr. Donoval appeared. (Donoval Rehearing Aff. Para. 29) The only person who was present at Sun Valley City Hall at the time was Former Treasurer Frostenson, who Mr. Donoval personally served the original Supplemental Hammer Release upon, at which time Mr. Donoval also explained to Former Treasurer Frostenson what the document was. (Donoval Rehearing Aff. Para. 29)

When Mr. Donoval met with Former Treasurer Frostenson at Sun Valley City Hall on January 23, 2012, Former Treasurer Frostenson presented Mr. Donoval with a proposed final Payroll Direct Deposit Voucher (the "Severance Pay Voucher") for Ms. Hammer, which Mr. Donoval reviewed and approved as to the withholdings. (Donoval Rehearing Aff. Para. 30) The Payroll Direct Deposit Voucher indicated that Sun Valley would be withholding income and employment taxes on the entire "severance" payment (Donoval Rehearing Aff. Para. 30), which Former Treasurer Frostenson indicated at the time was because the entire "severance" payment was "wages" and not settlement of other non wage related claims (Donoval Rehearing Aff. Para. 32)

On January 24, 2012, Ms. Hammer's checking account at Chase Bank received a direct deposit from Sun Valley for the "severance" balance due to Ms. Hammer pursuant to the Severance Clause in the sum of \$66,935.53, which is the amount that had been agreed to and indicated on the Severance Pay Voucher. (Donoval Rehearing Aff. Para. 33) (Hammer Rehearing Aff. Para. 25) Eventually, after the end of 2012, Ms. Hammer received a Form W-2 confirming that Sun Valley had withheld income and employment taxes on the entire "severance" balance that had been paid to Ms. Hammer by Sun Valley (Hammer Rehearing Aff. Para. 28).

Between the submission of the Supplemental Release to Former Treasurer Frostenson and Mr. Naylor on January 23, 2012 and the deposit of the "severance pay" balance paid to Ms. Hammer on January 24, 2012 by direct deposit into her bank account, neither Mr. Donoval or Ms. Hammer received any communications from Mr. Naylor or any other Sun Valley employee or official, seeking to clarify or amend the language in the Supplemental Hammer Release, or placing any other further conditions upon Ms. Hammer receiving the "severance" pay provided

for in the Severance Clause of the Employment Agreement, before Ms. Hammer was paid the “severance” pay due to Ms. Hammer pursuant to the Severance Clause of the Employment Agreement on January 24, 2012. (Donoval Rehearing Aff. Para. 32) (Hammer Rehearing Aff. Para. 26)

c) The Wage Claim Issues

On January 16, 2012, even before Ms. Hammer was terminated, Mr. Donoval sent Mr. Naylor an email, which described that if Sun Valley terminates Ms. Hammer and did not pay the “severance” payment Ms. Hammer was entitled to under the Severance Clause, as Mr. Naylor and Sun Valley had threatened, that pursuant to *Idaho Statute 45-615* Sun Valley would be liable to Ms. Hammer for treble damages, which considering how much Ms. Hammer was entitled to, could have resulted in payment to Ms. Hammer of \$200,000, rather than the \$65,000 or so in “severance” Ms. Hammer was otherwise entitled to. (Donoval Rehearing Aff. Para. 13)

On the day after Ms. Hammer was terminated, Mr. Donoval served a letter Mr. Donoval assisted Ms. Hammer draft of the same date, which demanded that Ms. Hammer be paid the full amount of “severance” and other wages she was due within forty eight (48) hours of receipt of Sun Valley’s receipt of the letter, as is required by *Idaho Statute 45-606*. (Donoval Rehearing Aff. Para. 17) (Hammer Rehearing Aff. Para. 16)

On January 21, 2012, Mr. Donoval and Mr. Naylor entered into a string of emails in which Mr. Donoval reminded Mr. Naylor that if Sun Valley did not pay Ms. Hammer the “severance” she was entitled to pursuant to the Severance Clause within forty eight (48) hours, as was required by *Idaho Statute 45-606*, Sun Valley would be subject to treble damages and attorneys’ fees for not doing so. (Donoval Rehearing Aff. Para. 21)

d) The Withholding Issues

Because Mr. Donoval is a former Certified Public Accountant, he has a heightened understanding that “severance pay” is defined as “wages” for income and employment tax purposes, and is also subject to withholding for income and employment taxes when paid. (Donoval Rehearing Aff. Para. 7 and 31)¹² Based on his experience as a former Certified Public Accountant, Mr. Donoval was also well aware that “liquidated damages” or other civil damages are not “wages” subject to income and employment tax withholdings. (Donoval Rehearing Aff. Para. 31 and 32)¹³

At the time Mr. Donoval approved the withholdings described in the Severance Pay Voucher and signed the Severance Pay Voucher, Mr. Donoval considered all of the “severance” pay that Ms. Hammer was to receive as taxable “wages” pursuant to the Severance Clause for past services to Sun Valley, and not payment as settlement for any non wage related claims that Ms. Hammer still possessed against Sun Valley, including any claims pursuant to the IPPEA, and certainly was not liquidated damages of any sort. (Donoval Rehearing Aff. Para. 32) At the time, Former Treasurer Frostenson agreed with Mr. Donoval that all of the “severance” payments that Ms. Hammer was to receive pursuant to the Severance Clause and described in the Severance Pay Voucher were “wages” subject to employment and income tax withholdings, and that none of the “severance” was exempt from income tax or employment tax withholding as “liquidated” or other non wage related damages. (Donoval Rehearing Aff. Para. 32) Had Mr. Donoval believed that any of the “severance” payments were not being considered “wages” for past services rendered by Ms. Hammer, but instead “liquidated damages” or other non wage

¹² As has been previously described, in *U.S. v. Quality Stores, Inc.*, the U.S. Supreme Court confirmed that “severance” pay was defined as “wages” for past performance of services for both income and employment tax purposes.

¹³ In *Rev. Rule 72-268* regarding liquidated damages, the IRS confirmed that “liquidated damages” are not “wages” subject to withholding for either income or employment tax purposes.

related damages (as the Court has now asserted in the Summary Judgment Decision), Mr. Donoval would have required that Sun Valley not withhold any income or employment taxes from that portion of the "severance" that was considered "liquidated damages" or other non wage damages as part of the Severance Pay Voucher, as Ms. Hammer was entitled to demand pursuant to the IRS guidelines. (Donoval Rehearing Aff. Para. 32)

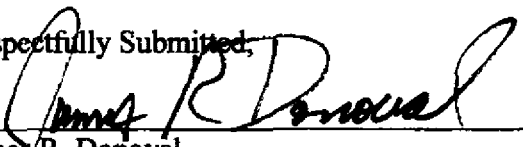
e) Ms. Hammer And Mr. Donoval Relied On Sun Valley's And Mr. Naylor's Actions And Inactions In Accepting The Conditional Nature Of The Supplemental Hammer Release And Classifying The Entire "Severance" Payments As "Wages" As Having Accepted That Ms. Hammer Had Not Waived Her IPPEA Claims

As all of the "severance" Ms. Hammer received had been fully withheld for both income and employment tax purposes, Mr. Donoval took that to be conclusive evidence that Sun Valley had agreed with Ms. Hammer and Mr. Donoval that all of the "severance" was defined as "wages" for past services Ms. Hammer had performed for Sun Valley, and not "liquidated damages" or other non wage related damages for any of the other claims that Ms. Hammer asserted that she was entitled to proceed with, including the IPPEA claims, which would have then been exempt from any income or employment tax withholdings. (Donoval Rehearing Aff. 34)

Based on the extensive communications between Mr. Donoval, Ms. Hammer, Mr. Naylor and Sun Valley, during the week before and after Ms. Hammer's termination, and the explicit notifications to Mr. Naylor and Sun Valley of the rejection that Ms. Hammer would ever agree that the unconditional language of "I release all claims against the City of Sun Valley" be placed in a written release she would be giving Sun Valley in return for receiving the "severance" pay she was entitled to pursuant to the Severance Clause of the Employment Agreement, Ms. Hammer and Mr. Donoval had the right to, and did, believe that Mr. Naylor and Sun Valley had accepted Ms. Hammer's conditions that she was entitled to the "severance" pay pursuant to the

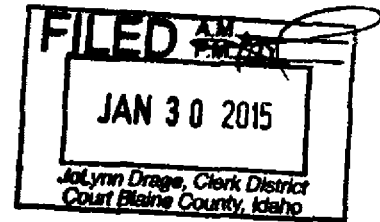
Severance Clause of the Employment Agreement without having to release any claims associated with the IPPEA, when Sun Valley accepted the "conditional" terms in the Conditional Clause of the Supplemental Hammer Release and thereafter paid Ms. Hammer the "severance" by direct deposit pursuant to such condition. (Donoval Rehearing Aff. Para. 36)

Respectfully Submitted,



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Solely For Summary Judgment Reconsideration Purposes

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Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ENTRY OF
SUMMARY JUDGMENT**

I) INTRODUCTION

The relevant section of the City Administrator Employment Agreement that Plaintiff Sharon R. Hammer ("Ms. Hammer") and Defendant The City Of Sun Valley ("Sun Valley") entered into in June of 2008 (the "Employment Agreement") (Hammer Rehearing Aff., Ex. A) related to the "severance" payments Ms. Hammer would be entitled to receive should she ever be terminated "without cause" by Sun Valley (the "Severance Clause"), is as follows:

SECTION 3. TERMINATION AND SEVERANCE PAY (emphasis added)

A. Employer acting through the Mayor, may terminate Employee's employment, without cause, for any reason or no reason. Any such decision to terminate shall occur only after the Mayor consults with each member of the City Council. Upon such termination, Employer shall pay Employee, as **severance pay (emphasis added)**, a lump sum cash payment equal to six (6) months, base salary described in Section 5, Subsection A.

The **severance payment (emphasis added)** herein is intended to be the Employee's sole exclusive remedy for any and all claims and damages of any kind

arising from a termination (emphasis added) without cause and such **severance payment** (emphasis added) is hereby agreed to be reasonable, fair and equitable by both parties to this Agreement. Accordingly, Employee waives her right to bring a claim of any kind for damages against Employee arising from a termination without cause. Consequently, receipt of the **severance payment** (emphasis added) is subject to the execution of a release¹ of all claims against the City of Sun Valley. A termination without cause shall not entitle Employee to an informal review under any section of the City of Sun Valley Personnel manual ("Personnel Manual"). (see Hammer Rehearing Aff., Ex. A)

Ms. Hammer has emphasized the phrase "severance pay" and "severance payments" in the Severance Clause above, because such phrase is specifically defined in multiple cases, statutes and regulations, including by the U.S. Supreme Court, as being "wages" in remuneration for past services, and not related to the settlement of other non wage related claims or as liquidated damages, as the Court found in the Memorandum Decision On Motions For Summary Judgment entered by the Court on January 12, 2015 (the "Summary Judgment Decision"). Both Ms. Hammer and former Sun Valley Mayor Wayne Willich ("Former Mayor Willich") have confirmed that when the Employment Agreement was entered into in June of 2008, they both considered that the phrase "severance" in the Severance Clause was defined by its common definition as "wages" for services Ms. Hammer rendered to Sun Valley should Sun Valley ever terminate Ms. Hammer at some time in the future, and not for anything else, including for the release of any non wage and benefit related claims, such as Ms. Hammer's IPPEA claims. As is further described herein, Ms. Hammer asserts that the Court erred by not following federal and Idaho legal precedent that defines "severance" as being for wages for services rendered and not for non-wage related claims, and by failing to accept the intent of what the "severance" related to

¹ It is not inconsequential that there was no sample "release" attached to the Employment Agreement drafted by then Sun Valley City Attorney Rand Peebles by which Ms. Hammer could have known exactly what it was that she was required to waive should she ever be terminated by Sun Valley "without cause" in order for Ms. Hammer to receive the "severance" described in the Severance Clause.

when Ms. Hammer and Former Mayor Willich (on behalf of Sun Valley) entered into the Employment Agreement in June of 2008.

As to the circumstance related to the Supplemental Release², eventually, after multiple communications between Ms. Hammer and Sun Valley officials, and several drafts, Ms. Hammer provided the Supplemental Hammer Release at issue (Hammer Rehearing Aff., Ex. B), which states as follows:

**SUPPLEMENTAL RELEASE PURSUANT TO CITY ADMINISTRATOR
EMPLOYMENT AGREEMENT**

Upon payment of the severance payment required pursuant to section 3.A of the City Administrator Employment Agreement dated June 1, 2008, I release the City Of Sun Valley for any claims defined in Section 3.A of the City Administrator Employment Agreement **as were intended when the City Administrator Agreement was entered into on June 1, 2008** (emphasis added). (see Hammer Rehearing Aff., Ex. B)

In entering its Summary Judgment Decision, the Court only looked at the language in the Supplemental Hammer Release that Ms. Hammer would “release the City Of Sun Valley for any claims defined in Section 3.A of the City Administrator Employment Agreement”, and then failed to recognize that the remaining portion of the same sentence added the conditional language that such release only applied to claims **“as were intended when the City Administrator Agreement was entered into on June 1, 2008”** (the “Conditional Clause”)³. Instead, the Court found that, notwithstanding the language of the Conditional Clause, that Ms. Hammer had knowingly waived “all” claims anyway.

² The Supplemental Release is described herein as the “Supplemental Hammer Release”, as it is actually the final of three drafted written releases that were passed back and forth between Ms. Hammer and Sun Valley, and is the conditional release eventually accepted by Sun Valley after extensive negotiations.

³ See Pg. 5 of the Summary Judgment Decision in which the Court only quotes the first half of the sentence to assert that Ms. Hammer “clearly absolves defendant of any liability for claims the plaintiff had at the time of her termination” and ignores the entire second half of the sentence (i.e. the Conditional Clause) which directly contradicts this finding.

In finding that Ms. Hammer waived “all claims”, Ms. Hammer asserts that the Court failed to recognize that the Conditional Clause was inserted into the Supplemental Hammer Release by Ms. Hammer for a purpose, namely, that Ms. Hammer was indicating to Sun Valley that she was reserving her right to proceed on claims that she had not intended to waive back in 2008 when the Employment Agreement was entered into, which included the IPPEA claims. If Ms. Hammer did not intend to reserve *some* claims, including the IPPEA claim, when she prepared and submitted the Supplemental Hammer Release, but instead understood that “all” claims were being waived under the Supplemental Hammer Release, then there was no need for her to even include the Conditional Clause in the Supplemental Hammer Release. As the Court found that the Severance Clause of the Employment Agreement waived “all” claims, then there was no need for Ms. Hammer to include the Conditional Clause in the Supplemental Hammer Release, if it was not somehow meant to clarify what was meant by the language of the Severance Clause. As the Court is required to presume that all language in a document is there for a reason, the Court erred by ignoring that Ms. Hammer intended that the Conditional Clause was included in the Supplemental Hammer Release to ensure that *some* claims, including Ms. Hammer’s IPPEA claims, were excluded from being waived in return for payment of the “severance”.

This is especially important because Ms. Hammer had rejected Sun Valley’s demands that Ms. Hammer instead sign a separate, unconditional release drafted by Sun Valley Attorney Kirtlan Naylor (“Mr. Naylor”), releasing any and all claims, immediately before Ms. Hammer submitted the conditional Supplement Hammer Release to Sun Valley. Ms. Hammer’s refusal to release any non-wage related claims had been extensively explained to both Mr. Naylor and Sun Valley officials in multiple correspondences both before, and after, Ms. Hammer’s termination

from Sun Valley on January 19, 2012. The Court decision effectively turned what was intended by Ms. Hammer to be a “conditional” release, which was communicated to Sun Valley as being a “conditional” release, into the “unconditional” release that Ms. Hammer had explicitly refused to sign. If Ms. Hammer knew she was waiving “all” claims, as the Court determined, then she would have merely signed the unconditional release that Sun Valley had provided her, rather than submitting a new, conditional release.

In the Summary Judgment Decision, in discussing estoppel, the Court inferred that Ms. Hammer had somehow lead Sun Valley into believing that Ms. Hammer was unconditionally releasing all claims she may have had against Sun Valley, not just wage and benefit related claims, when she submitted the Supplemental Hammer Release to Sun Valley on January 23, 2012. Apparently the Court believed that Sun Valley simply submitted a release to Ms. Hammer, which she then signed without any further discussions. That assertion is far from what actually happened. There were multiple correspondences and at least three versions of a release bantered back and forth between Ms. Hammer, her counsel James Donoval (“Mr. Donoval”) and Mr. Naylor, before Sun Valley eventually accepted the Supplemental Hammer Release with the explicit “conditional” language included and direct deposited into Ms. Hammer’s bank account the wage related “severance” she was entitled to pursuant to the Severance Clause. The correspondences, as are described herein, made clear to Mr. Naylor and Sun Valley officials that under no circumstances, whether Sun Valley paid Ms. Hammer the “severance” benefits described in the Severance Clause or not, was Ms. Hammer going to waive any non wage and benefit claims, including claims under the IPPEA.

The additional facts provided herein by Ms. Hammer, Mr. Donoval and Former Mayor Willich, and in particular facts related to the estoppel findings of the Court that were not

previously brought before the Court, negate any assertion that Ms. Hammer was somehow waiving any non-wage related claims in submitting the Supplemental Hammer Release, or that Ms. Hammer had somehow otherwise lead Sun Valley on in any way.

For convenience of the Court, Ms. Hammer has provided new Affidavits of herself, Mr. Donoval and Former Mayor Willich, and has attached to those Affidavits the relevant documents at issue, and the communications between Mr. Donoval, Ms. Hammer, Mr. Naylor and Sun Valley, related to the negotiations of the “severance” payments in the Employment Agreement and the submission of the Supplemental Hammer Release by Ms. Hammer to Sun Valley. In addition, Ms. Hammer has supplied the Court with a Facts In Support Of Motion For Reconsideration (the “Facts”), which provides the Court with a chronological description of the facts associated with the Employment Agreement, and the submission of the Supplemental Release to Sun Valley. Ms. Hammer incorporates the Facts into this Memorandum. The Memorandum is intended to focus solely on the legal arguments. The Facts and the chronology of events related to the Employment Agreement and the Supplemental Hammer Release, are a significant part of the Memorandum, and should be read prior to the Memorandum, as there are minimum references to the Affidavits and documents in the Memorandum itself.

II) RECONSIDERATION STANDARD OF REVIEW

I.R.C.P. Rule 11(a)(2)(B) provides that a motion for reconsideration of any interlocutory order of the Court, may be filed up until fourteen (14) days after entry of a final judgment. Other than that description, there is little in the way of a description of what basis is required for a litigant to seek reconsideration of the findings of the Court. As the Idaho Supreme Court has just recently stated in December of 2014 in *International Real Estate Solutions v. Arave*, 2014 WL

7384199, 3 (Idaho Sup.Ct. 2014), when considering a motion for reconsideration, “the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order.” Certainly, when the litigant believes that there are new facts that were not presented to the Court, the litigant has a basis for submitting those facts in support of reconsideration, which is clearly the case here, based on the Affidavits of Ms. Hammer, Mr. Donoval and Former Mayor Willich in support of reconsideration.

As is further described, the Court raised the estoppel issues *sua sponte* at the hearings in the matter, and made estoppel a significant basis for its findings in the Summary Judgment Decision. As is further described, the Idaho Supreme Court has described that reconsideration is appropriate where the court raises *sua sponte* matters in entering a summary judgment finding (see *Sales v. Peabody*, 157 Idaho 195, 335 P.3d 40, 46 (Id. Sup.Ct. 2014)) or where the litigant has not had the opportunity to adequately respond to issues which have been made part of a ruling by the court (see *Massey v. Conagra Foods*, 156 Idaho 476, 328 P.3d 456 (Idaho Sup.Ct. 2014)). Ms. Hammer did not have an opportunity to respond to the Court’s *sua sponte* estoppel concerns and findings regarding Ms. Hammer’s purportedly leading Sun Valley into believing that Ms. Hammer had waived “all” claims when she submitted the Supplemental Hammer Release, or as to whether Ms. Hammer was duplicative in asserting that she was both terminated “without cause” or “with cause”. Therefore, the findings of the Court are ripe for reconsideration.

Finally, in regards to reconsideration of the entry of summary judgment, in 2014, in *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (Idaho Sup.Ct. 2014), the Idaho Supreme Court has recently described that on reconsideration of a summary judgment finding, the standard is still simply whether there remains any genuine issues of material fact that should

have resulted in the defeat of summary judgment. As Ms. Hammer asserts that there remain genuine issues of material fact as to whether the Severance Clause in the Employment Agreement was ever intended to waive any non-wage claims upon payment of "severance" to Ms. Hammer, and whether Ms. Hammer intended to, or actually did, waive any non-wage claims by submission of the Supplemental Hammer Release to Sun Valley, Ms. Hammer is entitled to seek reconsideration of the findings in the Summary Judgment Decision.

III) THE SEVERANCE CLAUSE IN THE EMPLOYMENT AGREEMENT AND THE INTENT OF MS. HAMMER AND FORMER MAYOR WILlich AS TO WHAT IT MEANT

1) The Court Was Required To Read The Supplemental Release And The Employment Agreement Together To Make Its Determination Of What The Supplemental Hammer Release Meant, Including That It Was Ms. Hammer's Intent That Was The Primary Factor In Determining What Claims She Was Releasing By Accepting The Severance Payment

Multiple Idaho cases stand for the proposition that when a document has an ambiguity in it, that the court must look to extrinsic evidence to determine its meaning, (see *Brown v. Gearheart*, 157 Idaho 156, 335 P.3d 1, 11 (Idaho Sup.Ct. 2014); *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595 (Idaho Sup.Ct. 2011) ; *Simons v. Simons*, 134 Idaho 824, 828, 11 P.3d 20 (Idaho Sup.Ct. 2000)).

In addition, when one document refers to another document, namely, it incorporates by reference the second document, the Court must also look outside the first document for guidance, and interpret the two documents together (see *Opportunity v. Osseward*, 136 Idaho 602, 607, 38 P.3d 1258 (Idaho Sup.Ct. 2002)).

In the Summary Judgment Decision, the Court did not describe whether it looked outside the four corners of the Supplemental Hammer Release because it was ambiguous, or because the Supplemental Hammer Release incorporated by reference the Employment Agreement. None the less, the Court looked outside the four corners of the Supplemental Hammer Release to the

Employment Agreement, but failed to acknowledge that it was Ms. Hammer's "intent" phraseology in the Supplemental Hammer Release that should have been the determining factor in its decision. Instead the Court looked at the Severance Clause alone, in what Ms. Hammer believes was error.

The Court obviously looked outside the four corners of the Supplemental Hammer Release to the Employment Agreement in entering summary judgment. The Court therefore, either found the Supplemental Hammer Release to be ambiguous⁴, or that the Supplemental Hammer Release and the Supplemental Hammer Release needed to be read together, as is required under *Opportunity v. Ossewarde*. If the Court is going to interpret the two documents together, the Court must include that the phrase "intent" in the Supplemental Hammer Release relates to the Employment Agreement. Since the Supplemental Hammer Release clearly required that Ms. Hammer's "intent" was the controlling factor regarding what Ms. Hammer intended to prospectively release under the Severance Clause, it was error for the Court not to analyze what Ms. Hammer's intent was when entering into the Employment Agreement. As Ms. Hammer has sworn to, it was never Ms. Hammer's intent when she entered into the Employment Agreement to waive any non-wage related claims, including any prospective IPPEA related claims.

Ms. Hammer asserts that in interpreting the Hammer Supplemental Release and the Employment Agreement together, there still remains genuine issues of material fact related to what Ms. Hammer's intent was regarding what claims would be waived should she be terminated "without cause", which prohibits the entry of summary judgment in Sun Valley's favor.

⁴ It should be noted that from Ms. Hammer's perspective, the Supplemental Hammer Release is not an ambiguous document in that it clearly reflects that Ms. Hammer was not waiving any claims she did not intend when she entered into the Employment Agreement in June of 2008, of which her IPPEA claims were one claim she was not waiving.

2) The Court Must Look To The Intent Of Ms. Hammer And Mayor Willich At The Time They Entered Into The Employment Agreement, To Interpret What Was Meant By The Severance Clause

a) Idaho Law Requires That The Court Accept The Intent Of What The Terms Of The Employment Agreement Meant When Ms. Hammer And Former Mayor Willich Entered Into The Employment Agreement In 2008

In *Opportunity, LLC v. Ossewarde*, 136 Idaho 602, 38 P.3d 1258, 1263 (Idaho Sup.Ct.

2002), in regards to interpreting provisions of a contract, the Idaho Supreme Court directed lower courts as follows:

“When a subsequent executed document specifically references and relies on a former agreement, the two are to be interpreted together if possible ... The primary aim in the interpretation of all contracts is to ascertain the mutual intent of the parties *at the time the contract was made* (emphasis added). If possible, the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent. Where the parties’ intent cannot be understood from the language employed in the writing, intent becomes a question of fact to be determined in light of extrinsic evidence. Further, when the purpose or objective of the parties is ascertainable, the trier of fact may accord it great weight.”

The Court’s findings in the Summary Judgment Decision, ignored what Ms. Hammer and Former Mayor Willich have certified under oath was their intent when they entered into the Employment Agreement in June of 2008. This finding directly contradicts the directions of the Idaho Supreme Court in *Opportunity v. Ossewarde* that the Court must accept the intent of the parties (i.e. Ms. Hammer and Former Mayor Willich in this case), when they entered into an agreement, when subsequently interpreting provisions of the agreement.

In addition, in *Straub v. Smith*, 145 Idaho 65, 175 P.3d 754 (2007), in referencing *Opportunity v. Ossewarde*, the Idaho Supreme Court has mandated that when there is a dispute as to the intentions of the parties to a contract, “We construe the contract against the person who prepared the contract.” (see *Straub v. Smith*, 69) Therefore, even if the Court continues to choose to ignore Former Mayor Willich’s testimony on the issue, the Court was obligated to

interpret the phrase “severance” and the intent of the Severance Clause, against the current administration of Sun Valley, because Sun Valley was the drafter of the Employment Agreement in 2008, and, did not clearly and adequately define what was meant by the Severance Clause when the Employment Agreement was entered into.

Ms. Hammer asserts that the Court’s finding that the current administration of Sun Valley’s interpretation of the Severance Clause in the Employment Agreement supersedes the intent of Former Mayor Willich and Ms. Hammer when they entered into the Employment Agreement in June of 2008, and the Court’s interpretation of the term “severance” against Sun Valley (i.e. the drafter of the Employment Agreement), contradicts Idaho precedent related to contract interpretation. Idaho law requires that the Court look to the intent of Ms. Hammer and Former Mayor Willich when the Employment Agreement was entered into, and not to the contradictory arguments of the subsequent officers of Sun Valley.

b) Ms. Hammer’s And Former Mayor Willich’s Clear Intent At the Time They Entered Into The Employment Agreement Was To Not Require Ms. Hammer To Release Any Non Wage And Employee Benefit Related Claims, Such As Claims Under The IPPEA, Should Ms. Hammer Ever Be Terminated Without Cause

As is described in the Affidavits of Ms. Hammer and Former Mayor Willich, and which are also detailed on pages 1 through 7 of the Facts, Ms. Hammer and Former Mayor Willich based their understanding of whether Ms. Hammer would be waiving any non wage related claims should she ever be terminated, on their professional understanding of what “severance” meant, and by the common usage of “severance” as being related to services rendered. Both Ms. Hammer and Former Mayor Willich have provided explicit information, in the form of their Affidavits herein, to express that their clear mutual intent at the time the Employment Agreement was entered into was that neither intended to require that Ms. Hammer waive any prospective

IPPEA claims should Ms. Hammer be terminated “without cause” and seek to collect on the “severance” she was entitled in the Employment Agreement.

It is also of note that on January 18, 2012, the day before Ms. Hammer was terminated by Sun Valley, in a letter to Mr. Naylor (Donoval Rehearing Aff. Para. 14), Mr. Donoval confirmed this position by stating:

“the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribb and several other claims, do not arise “from a termination”, they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement. So as I have stated, if the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.”

There is no genuine issue of material fact that prior to Sun Valley terminating Ms. Hammer, Sun Valley, through Mr. Naylor, was aware of Ms. Hammer’s assertion that “severance”, as described in the Severance Clause, only meant wage related claims, and that Ms. Hammer had not prospectively waived any non wage related claims should she be terminated “without cause” and paid the “severance” when she entered into the Employment Agreement in June of 2008.

3) Even If The Court Refuses To Recognize That It Must Take Ms. Hammer’s And Former Mayor Willich’s Intent Into Consideration, Idaho And Other Legal Precedent Requires A Finding That The Payment Of “Severance” Does Not Include The Settlement Of Non Wage Or Service Related Claims

In the Summary Judgment Decision, the Court found that “severance”, as described in the Severance Clause of the Employment Agreement, was not “severance”, but was actually

“liquidated damages”⁸, even though the phrase “severance” is used at least five (5) times in the Severance Clause, including in the heading, and the phrase “liquidated damages” cannot be found in the Severance Clause or anywhere else in the Employment Agreement.

In *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 367, 679 P.2d 640 (Idaho Sup.Ct. 1984), in determining whether “severance” pay was “wages” under *Idaho Statute 45-608* (related to the statute of limitation on collection of wages law suits), the Idaho Supreme Court stated that “Severance pay is also a component of compensation in an employment agreement ... Thus we hold that a claim for severance pay also comes within the parameters of *Idaho Statute 45-608*.” (i.e. Re: Collection Of Wages).

In *Parker v. Underwriters Laboratories*, 140 Idaho 517, 96 P.3d 618 (Idaho Sup.Ct. 2004), the Idaho Supreme Court discussed whether non lump sum, on-going post termination payments made to an employee after termination were considered “wages”, thus disqualifying the former employee from receiving unemployment benefits while she was still receiving the post termination payments. In *Parker v. Underwriters*, the Idaho Supreme Court stated:

“ ‘Severance pay’ has been defined as ‘a sum of money usually based on length of employment for which an employee is eligible upon termination.’ (citing to the *American Heritage Dictionary Of the English Language*, 4th Edition, 2000). The purpose of a severance plan is to protect employees from economic hardship and **to reward them for past services rendered.** (emphasis added)” (citing to 27 Am.Jur.2d, *Employment Relationships*, Sec. 70) (@ 520)

The *Parker v. Underwriters* Court then cited to a Colorado case of *Moore v. Digital Equipment*, 868 P.2d 1170, 1172 (Colo. App.Ct. 1994) by stating that “A severance allowance is a payment made to an employee in return **for services previously provided** (emphasis added).”⁹

⁸ On Page 7 of the Summary Judgment Decision, the Court states: “This case is more comparable to *Moore v. Omnicare, Inc.*, 141 Idaho 809, 118 P.3d 141 (Idaho Sup.Ct. 2005), where the Court determined that “liquidated damages” for an employee’s termination “without cause” were not considered “wages” already earned.”

⁹ It should be noted that in *Parker v. Underwriters* the Idaho Supreme Court found that non lump sum, on-going, post termination payments to an employee, in that case, were not wage related “severance” payments, but

The Court should recognize that for income, employment and withholding tax purposes, the U.S. Supreme Court has defined “severance” to be “wages” for services rendered to an employer. The issue in the 2014 case of *U.S. v. Quality Stores*, 134 S.Ct. 1395 (U.S. Sup.Ct. 2014) was whether an employer was required to withhold employment and FICA taxes on “severance” payments made to employees when the company closed. In discussing what “severance” payments are, the U.S. Supreme Court in *U.S. v. Quality Stores*, 1399-1400 stated:

“Severance payments made to terminated employees are ‘remuneration for employment’. Severance payments are, of course, ‘remuneration’, and common sense dictates that employees receive the payments ‘for employment’ ... Severance payments are made in consideration for employment – for a ‘service ... performed’ by ‘an employee for the person employing him.’ ”

In making its decision, the Court chose to rely on the *Moore v. Omnicare*, 141 Idaho 809, 118 P.3d 141 (Idaho Sup.Ct. 2005) to determine that the “severance” paid to Ms. Hammer was not “wages”, but was “liquidated damages” which covered any and all of Ms. Hammer’s non wage or benefit claims, including her IPPEA claim. However, there are significant differences between the employment settlement payments made to the plaintiff in *Moore v. Omnicare* and the “severance” paid to Ms. Hammer. First, in *Moore v. Omnicare*, the plaintiff was paid separation payments for an extensive period time after the plaintiff’s termination for employment. Ms. Hammer received a single, lump sum payment at termination. Second, the employment agreement that the plaintiff in *Moore v. Omnicare* signed did not include the phrase “severance”. The phrase “severance” was used at least five (5) times in the Severance Clause of the Employment Agreement, including in the heading, in describing what Ms. Hammer would be

instead were considered payments for settlement of separate non wage claims pursuant to the written settlement agreement that the plaintiff had entered into with the defendant, specifically because the settlement agreement had used the phrase “enhanced” severance benefits. In *Parker v. Underwriters*, it was these “enhanced” benefits that turned the payments into something other than “wages”, not the underlying “severance” that the plaintiff was entitled to pursuant to the standard company severance program.

paid if she was terminated “without cause”. Additionally, the phrase “severance payment” was specifically used in the Supplemental Hammer Release.

In entering summary judgment, the Court took little notice of the non-reported *Sarbacher v. Americold Realty*, 2011 WL 5520442 (U.S. Idaho 2011) case from the U.S. District Court for Idaho. However, Judge Winmill’s well thought out analysis in *Sarbacher* of whether “severance” payments are “wages” under Idaho law is pertinent. The facts in *Sarbacher* are almost identical to the facts herein, including that the plaintiff in *Sarbacher* had entered into a written employment agreement in which his termination pay was specifically defined as “severance” in several places, similar to the Severance Clause in the Employment Agreement signed by Ms. Hammer. In *Sarbacher*, Judge Winmill confirmed that the Idaho Supreme Court had clearly recognized that *Johnson v. Allied Stores* “stands for the proposition that severance pay is a wage under Idaho’s Wage Law.” (@ 8) In *Sarbacher*, Judge Winmill discounts the findings of *Moore v. Omnicare* because the plaintiff in *Sarbacher* received a lump sum “severance” payment, while the plaintiff in *Moore v. Omnicare* received post termination payments over an extended period of time¹⁰. The plaintiff’s contract in *Sarbacher* specifically described the lump sum payment as “severance”, and as Judge Winmill strongly noted “the *Sarbacher* agreement repeatedly uses the term ‘severance’, while the *Moore* contract did not. Indeed, as *Sarbacher* points out, the entire *Moore* opinion does not once use the term ‘severance’” (*Sarbacher*, 9). The same is true herein, in that the Severance Clause of the Employment Agreement uses the phrase “severance” five (5) times, including in the heading of the Severance Clause, and the Supplemental Hammer Release also uses the phrase “severance”, and yet the phrase “liquidated damages” is not used anywhere in either document.

¹⁰ On Page 9 of *Sarbacher* Judge Winmill notes “the determinative factor in *Moore* was that the damages award ultimately called for a payment of future wages. For the reasons discussed, the severance payment at issue here does not. *Moore* is inapposite.”

In summary, in the *Johnson v. Allied Stores* and *Parker v. Underwriters* cases, the Idaho Supreme Court clearly defined “severance” as pay for “services previously provided”. In *U.S. v. Quality Stores*, the U.S. Supreme Court clearly defined that “severance” is “remuneration” for a “service performed”. In *Sarbacher*, in analyzing Idaho employment law, a U.S. District Court Judge found that, when an employee’s contract clearly uses the phraseology of “severance” in multiple places and the employee receives a lump sum payment upon termination as opposed to receiving a stream of post termination payments, that the payments the employee received upon termination are clearly “wages”. Ms. Hammer asserts that it was judicial error for the Court to fail to follow established legal precedent regarding whether Ms. Hammer’s severance was considered “wages” or “remuneration” for past services, and not related to the waiver of any non-wage claims. Ms. Hammer requests that the Court reconsider its Summary Judgment Decision, and reverse its findings to specifically find that Ms. Hammer’s lump sum “severance” payment was “wages” for prior services rendered to Sun Valley, and not related to any settlement of other non service related claims such as her IPPEA claims, pursuant to established legal precedent.

4) Because The “Severance” Related To Past Services Rendered By Ms. Hammer To Sun Valley, And Not To Any Non Wage Related Claims, Sun Valley Was Required To Provide Ms. Hammer With Additional Consideration If It Claimed Ms. Hammer Waived Any Non Wage Claims, Such As Any IPPEA Claims

In her prior briefs, Ms. Hammer argued that because the “severance” she was paid only covered “wages” for past performance, and because Sun Valley provided no additional compensation for the release of non wage claims such as the IPPEA claim, that she was entitled to continue to pursue her IPPEA claims.

If Sun Valley intended the Severance Clause in the Employment Agreement to give rise to a release of Ms. Hammer’s IPPEA rights and protections, it needed to pay consideration

beyond the “severance” (i.e. wages) provided for in the Severance Clause of the Employment Agreement for that additional release. (see *Groves v. Firebird Raceway*, 94-3554, 1995 U.S. App. LEXIS 28191 (U.S. 9th App. 1995) citing *Lomas & Nettleton Co. v. Tiger Enters, Inc.*, 99 Idaho 539, 585 P.2d 949, 952 (Idaho Sup.Ct. 1978) (a release is a type of contract); *Vance v. Connell*, 96 Idaho 417, 529 P.2d 1289, 1291 (Idaho Sup.Ct. 1974) (some consideration is a necessary element to all contracts); *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 562) (U.S. Minn. 1995) (as with any other contract, a release requires consideration); and, *Brown v. Kentucky Lottery Corp.*, 891 S.W.2d 90, 92) (Kentucky App.Ct. 1995) (it is well established that a release must be supported by valuable consideration)).

As Ms. Hammer’s prior service to Sun Valley was the consideration for the “severance” in the Severance Clause of the Employment Agreement, if Sun Valley wanted Ms. Hammer to waive any other non wage related claims, Sun Valley was required to provide Ms. Hammer with additional consideration. In both *Moore v. Omnicare* and *Parker v. Underwriters*, that is exactly what the Idaho Supreme Court found. In *Moore v. Omnicare* the Idaho Supreme Court concluded that the post termination on-going payments made to the plaintiff was additional consideration for the release of non wage claims, and was therefore not “wages” but “liquidated damages”. In *Parker v. Underwriters*, the Idaho Supreme Court found that the “enhanced” severance that the defendant paid the plaintiff, above and beyond what was required by the standard employer severance plan, was additional consideration for the release of the plaintiff’s other non wage claims. As Judge Winmill pointed out regarding *Sarbacher*, this case is nothing like either *Moore v. Omnicare* or *Parker v. Underwriters*, as Ms. Hammer received nothing more than she had already been entitled to under the Severance Clause of the Employment Agreement when she received her “severance” pay for the prior service she performed for Sun Valley.

The payment of “severance” only applied to Ms. Hammer’s past services rendered to Sun Valley, and Sun Valley provided Ms. Hammer no additional consideration for the release of her IPPEA claims, therefore Ms. Hammer asserts the Court must reverse its findings in favor of Sun Valley on the issue, and instead must enter findings on behalf of Ms. Hammer, that as a matter of law, Ms. Hammer did not waive any right to further pursue her IPPEA claims when she submitted the conditional Supplemental Hammer Release to Sun Valley and was thereafter paid the “severance” she was entitled to for past services rendered to Sun Valley, because she was provided no additional consideration.

IV) THE WAIVER AND ESTOPPEL FINDINGS

In *Sales v. Peabody*, 157 Idaho 195, 335 P.3d 40, 46 (2014) the Idaho Supreme Court confirmed that a district court “may not grant summary judgment on a ground raised *sua sponte*”. Sun Valley did not specifically raise estoppel arguments in its prior briefs. Instead, the Court of its own raised the issue of estoppel *sua sponte* at the oral arguments on the counter motions for summary judgment, and discussed it in its Summary Judgment Decision (Pg. 8-9 Summary Judgment Decision). Ms. Hammer was never allowed to adequately respond to the estoppel finding issued by the Court. Therefore, the issue is ripe for reconsideration briefing.

1) Contrary To The Court’s Findings, There Was Extensive Correspondences And Discussions Between The Parties Regarding Ms. Hammer’s Non Waiver Of Non Wage And Employee Benefit Claims, Making Sun Valley And Mr. Naylor Extensively Aware That Ms. Hammer Was Refusing To Waive Any Non Wage And Employee Benefit Claims, Including The IPPEA Claims, Whether Sun Valley Paid Ms. Hammer Or Not, When Sun Valley Accepted The Conditional Clause In The Supplemental Release

As is described in the Affidavits of Ms. Hammer and Mr. Donoval, and in detail on pages 7 – 17 of the Facts, there was extensive discussions and negotiations between Ms. Hammer, Mr.

Donoval Mr. Naylor and Sun Valley officials which made clear to Mr. Naylor and Sun Valley that Ms. Hammer was not releasing any non wage or employee benefit claims, such as the IPPEA claims; regardless of whether Ms. Hammer signed a release; and regardless of whether Sun Valley paid Ms. Hammer the “severance”. When Sun Valley accepted the Hammer Supplementary Release with the Conditional Clause, and paid Ms. Hammer the “severance” described in the Severance Clause, Mr. Naylor and Sun Valley did so with the full knowledge that Ms. Hammer was not releasing her IPPEA claims.

2) Under Idaho Law, Ms. Hammer Did Not Unequivocally Waive Any Non Wage And Employee Benefit Claims, Including Her IPPEA Claims, By Submitting The Supplemental Hammer Release Which Included The Conditional Clause

In 2011, in a seminal case regarding the issue of waiver, in *Knipe Land Co. v. Robertson*, 151 Idaho 449, 458, 259 P.3d 595 (Idaho Sup.Ct. 2011), the Idaho Supreme Court clearly and succinctly stated in regards to whether someone had waived rights that they possessed that:

“A waiver is a voluntary, intentional relinquishment of a known right or advantage, and the party asserting the waiver must show that he acted in reasonable reliance upon it and that he thereby has altered his position to his detriment ... A clear intention to waive must be shown before waiver shall be established. Waiver will not be inferred except from a clear and unequivocal act manifesting an intent to waive, or from conduct amounting to estoppel.”

As recently as August of 2014, the Idaho Supreme Court confirmed this analysis related to waiver in *Pocatello Hospital v. Quail Ridge Medical Investor, LLC*, 156 Idaho 709, 719, 330 P.3d 1067 (Idaho Sup.Ct. 2014). Ms. Hammer asserts that the Court should also look to the language of the Missouri Appellate Court for guidance as to when a waiver has actually occurred described in *Frisella v. RVB Corp.*, 979 S.W.2d 474, 477 (Mo. App.Ct.E.D. 1998), namely, that:

“To rise to the level of waiver, the conduct must be so manifestly consistent with and indicative of an intention to renounce a particular right of benefit that no other reasonable explanation of the conduct is possible.”

As is shown by the facts described on pages 7 – 17 of the Facts, during the week immediately before Ms. Hammer's termination and the week after Ms. Hammer's termination through the submission of the Supplemental Hammer Release, Ms. Hammer and Mr. Donoval made numerous specific statements to Mr. Naylor and Sun Valley asserting that under no circumstances was Ms. Hammer submitting an unconditional release in return for receiving her "severance" payments as were required under the Severance Clause of the Employment Agreement. There is nothing in the communications between Ms. Hammer, Mr. Donoval, Mr. Naylor and Sun Valley related to the "severance" payments or Ms. Hammer's submission of the Supplemental Hammer Release that could have lead Sun Valley officials to conclude that Ms. Hammer was giving Sun Valley a "voluntary, intentional relinquishment of her rights" to continue to seek her claims under the IPPEA; or a "clear intention to waive" her right to continue to proceed on her IPPEA claims. Ms. Hammer also did not make a "clear and unequivocal act manifesting an intent to waive" her rights to continue proceeding on her IPPEA claims. Ms. Hammer made it clear to Sun Valley through her communications that she was refusing to release "all" claims and was reserving claims that were not intended when she entered into the Employment Agreement in 2008, including any claims under the IPPEA. Through Ms. Hammer's and Mr. Donoval's communications and actions, Ms. Hammer made clear that she was not providing a "clear and unequivocal act manifesting an intent to waive" her right to continue pursuing her claims under the IPPEA.

Knipe requires that Sun Valley bore the burden of showing that it acted in "reasonable reliance" on Ms. Hammer's actions that Ms. Hammer was waiving her claims. Contrary to that burden, in the prior pleadings, Sun Valley provided no testamentary or other factual evidence related to whether Sun Valley Mayor DeWayne Briscoe or the members of the Sun Valley City

Council were informed of Ms. Hammer's communications and refusal to waive "all" claims, or what, if anything, they actually "relied upon" related to what Ms. Hammer was waving and what she was not. The Court could only infer what Sun Valley and its officials relied upon, based on the unverified and unsupported assertions and arguments in prior Sun Valley briefs. Summary Judgment cannot be supported by inferences regarding what Sun Valley officials relied upon, and may only be entered when there are no genuine issues of material fact.

In its Summary Judgment Decision, the Court cited Ms. Hammer's prior Affidavit in which she said "In order to secure my immediate financial security, I was forced to sign a release of claims that was acceptable to the City" as evidence that Ms. Hammer knew that she was waiving all potential claims against Sun Valley when she submitted the Supplemental Hammer Release to Sun Valley. Ms. Hammer has now clarified to the Court that by that statement:

*"I was merely reflecting the two options that Sun Valley was asserting that I was facing at that time. The Court should note that I rejected Mr. Naylor's and Sun Valley's demands and did not sign the Proposed Sun Valley Release. I assert that I selected a third option, by notifying Sun Valley that I was demanding that I be paid the "severance" payment that I was entitled to for past performance, service, wage and employee benefits, and that I was still retaining any other claims against Sun Valley and its officials, including any IPPEA claims."*¹⁴ (Hammer Rehearing Aff., Para. 20)

Ms. Hammer consistently made this factual allegation and argument in her briefs related to the counter summary judgment motions. The Court did not consider that there was a third option, which Ms. Hammer selected. On reconsideration, the Court should consider that Ms. Hammer selected the third option of retaining "some" claims and waiving only her wage and benefit related claims by the submission of the Supplemental Hammer Release and receipt of the "severance".

¹⁴ At oral argument on the matter, Ms. Hammer's attorney Eric Swartz asserted that this was one of the issues that made clear that there were still "genuine issues of material fact" which prohibited summary judgment from being entered, and that the matter should continue to trial for further clarification of the facts surrounding the terms of the Employment Agreement and the Supplemental Hammer Release. The Court apparently rejected that assertion by Mr. Swartz.

There are genuine issues of material fact as to a) whether Sun Valley paid Ms. Hammer the “severance” on January 24, 2012, because if Sun Valley had not paid those “severance” payments within forty eight (48) hours pursuant to *Idaho Statute 45-606* Sun Valley would have been subject to substantial penalties under Idaho wage laws, or, b) whether Sun Valley paid Ms. Hammer the “severance” on January 24, 2012 because Sun Valley Mayor DeWayne Briscoe and the Sun Valley City Council believed that Ms. Hammer had waived “all” her claims when she rejected the Proposed Sun Valley Release and instead submitted the conditional Supplemental Hammer Release, as Sun Valley asserts and the Court found.

Ms. Hammer (and Mr. Donoval) did not waive Ms. Hammer’s IPPEA claims. They spent two weeks around Ms. Hammer’s termination submitting multiple correspondences to Mr. Naylor and Sun Valley confirming that Ms. Hammer was not going to waive her non wage claims, and negotiating three separate written releases, resulting in the final Supplemental Hammer Release which included clear “conditional” language (i.e. the Conditional Clause) stating that Ms. Hammer was only waiving claims “as were intended when the City Administrator Employment Agreement was entered into on June 1, 2008.” Ms. Hammer unequivocally rejected the unconditional terms of the Proposed Sun Valley Release. Sun Valley accepted the replacement Supplemental Hammer Release with the conditional language in the Conditional Clause, and, thereafter, knowing that there was conditional language in the Supplemental Hammer Release, did nothing further to seek to continue to enforce Sun Valley’s demands that Ms. Hammer provide an unconditional release of “all” of Ms. Hammer’s claims before paying Ms. Hammer the “severance” payment on January 24, 2012.

It was error for the Court to have found that Ms. Hammer did not reject Mr. Naylor’s and Sun Valley’s demands that she sign an unconditional release to receive her “severance”, when

she explicitly rejected the Proposed Sun Valley Release and instead submitted the Supplemental Hammer Release which included the Conditional Clause. As Ms. Hammer did not “clearly and unequivocally” intend to waive any of her IPPEA claims when she submitted the Supplemental Hammer Release, as was required by Idaho law (i.e. *Knipe and Pocatello Hospital*), the Court erred in entering summary judgment against Ms. Hammer based on a purported waiver of her claims by submission of the conditional Supplemental Hammer Release which included the Conditional Clause. There continues to be genuine issues of material fact related to the matter to require the reversal of the Court’s summary judgment findings as to waiver.

3) Ms. Hammer Should Not Be Estopped From Asserting That She Did Not Waive Her IPPEA Claims, Because Of The Extensive Communications Between Ms. Hammer And Sun Valley Confirming Such, And Because Of The Language Of The Conditional Clause In The Supplemental Hammer Release Confirming Such. Instead, Sun Valley Should Be Estopped From Denying That Ms. Hammer Had Reserved Her Rights To Proceed With Her IPPEA Claims

In the Summary Judgment Decision, the Court cites several cases related to the concept of estoppel under Idaho case law. Ms. Hammer has no dispute with the Court’s discussion in the Summary Judgment Decision that estoppel applies in certain cases. However, Ms. Hammer disputes that she did anything which would warrant a finding of estoppel related to her providing of the Supplemental Hammer Release to Sun Valley or her other claims in the matter.

a) The “Without Cause” Verse “With Cause” Estoppel Assertion

In the Summary Judgment Decision, the Court states that Ms. Hammer is estopped from asserting that she waived “all” claims because of her inconsistent arguments that she was really terminated “with cause” rather than “without cause” (Summary Judgment Decision, Pg. 8). Ms. Hammer asserts that this finding misrepresents what Ms. Hammer claimed in her prior filings, and continues to claim.

Ms. Hammer has never had a problem with having been terminated “without cause”. Ms. Hammer confirms that Sun Valley had every right to do so, and that Sun Valley actually did so on January 19, 2012. In fact, in order to attempt to rehabilitate her ruined career, Ms. Hammer continues to seek conclusive, undeniable confirmation from Sun Valley that she was terminated “without cause”, which Sun Valley, by its actions, refuses to do. It is not Ms. Hammer that claims she was terminated “with cause”, it is Sun Valley that is asserting that Ms. Hammer was really terminated “with cause” by publicly and falsely asserting that Ms. Hammer committed acts of misconduct, including criminal acts – conduct Ms. Hammer wants stopped or wants damages for.

What Ms. Hammer has consistently asserted to the Court is that Sun Valley was prohibited from terminating her “without cause”, for contract purposes, and then thereafter publicly asserting that she was actually terminated “with cause”, including by announcing to the public that Sun Valley was seeking a criminal investigation against her¹⁵. Ms. Hammer’s position has consistently been that Sun Valley could not use a claim of a “without cause” termination as a subterfuge for really terminating Ms. Hammer “with cause”, subjecting Sun Valley to damages outside the contractual “severance” that Ms. Hammer was entitled to in the Severance Clause of the Employment Agreement as part of her IPPEA claims.

Ms. Hammer was entitled to the benefit of the inherent bargain she made in the Employment Agreement, namely, that if Sun Valley was going to terminate her “without cause” that Sun Valley was thereafter contractually prohibited from then subsequently professing publicly just the opposite. In reality, it is the non “severance” related rights Ms. Hammer had in her contract that Ms. Hammer continues to pursue, namely, that Sun Valley violated her

¹⁵ It should be noted that Ms. Hammer’s breach of contract claims in the Federal Law Suit (*Hammer v. Sun Valley, et al.*, 1:13-cv-00211-EJL (U.S. Idaho)) argues exactly that.

contractual right to publicly be found to have been terminated “without cause”, without Sun Valley publicly claiming that she was actually terminated “with cause”, and violated the IPPEA by using pretext for her termination. By terminating Ms. Hammer “without cause” for contract purposes, and using a “without cause” termination as a pretext for publicly asserting that Ms. Hammer actually was terminated “with cause” and then publicly going on a campaign of asserting that Ms. Hammer was actually terminated “with cause”, if anyone is judicially estopped for taking inconsistent positions, it should be Sun Valley.

It is not inconsistent for Ms. Hammer to readily agree that she was terminated “without cause” under her contract in pleadings, and at the same time assert that Sun Valley has, and continues, to violate its non-financial contractual obligations to not publicly ruin Ms. Hammer’s professional career by asserting that she was actually terminated “with cause”.

Ms. Hammer has certainly not been “playing fast and loose” with the Court (see *Sword v. Sweet*, 140 Idaho 242, 252, 92 P.3d 492 (Idaho Sup.Ct. 2004))(see Summary Judgment Decision, Pg. 8). Separate from having been entitled to the payment of her “severance”, Ms. Hammer is merely trying to enforce that she was actually terminated “without cause”, in contradiction to excessive public statements to the contrary by Sun Valley. Ms. Hammer is entitled to the benefit of the bargain that Sun Valley would not terminate her “without cause” and still publicly claim she was actually terminated “with cause”. That is not an inconsistent position, and should not be considered to judicially estop Ms. Hammer from pursuing her IPPEA Claims, or any other claim.

At a minimum, Ms. Hammer should be allowed to testify at an evidential hearing related to the issues associated with her purported inconsistent positions related to whether she asserts that she was terminated “without cause” or “with cause”, as was the case in *Sword v. Sweet*, 502, where the district court held evidential hearings, and where the Idaho Supreme Court determined

that based on the evidential hearings that the person at issue was not playing “fast and loose” related to whether a preliminary agreement had been made final or not. As is the case with the individual in *Sword v. Sweet*, Ms. Hammer by no means was playing “fast and loose” in regards to assertions that she was contractually and legally terminated “without cause” and that Sun Valley has thereafter publically contradicted that Ms. Hammer was terminated “without cause” in numerous ways.

b) Ms. Hammer Did Not Lead Sun Valley Officials Into Believing That Ms. Hammer Was Unconditionally Waiving All Claims By Submitting the Supplemental Hammer Release, In Fact The Opposite Is True

Sun Valley has argued that Ms. Hammer only had two choices, namely, to sign an unconditional waiver and accept the “severance”, or not sign an unconditional waiver and forfeit her right to the “severance”. Ms. Hammer has steadfastly rejected that assertion, and has insisted that she entered into a third option, which was to waive any further rights to challenge that she was entitled to receive any further compensation for any work she performed for Sun Valley or in regards to her employee benefits, and not waive any other non wage related claims she was entitled to make, including her IPPEA claims, as had been contemplated when she entered into the Employment Agreement in June of 2008.

The Court should consider Mr. Donoval’s previously described letter to Mr. Naylor on January 18, 2014 (Donoval Rehearing Aff., Para. 15), *the day before Ms. Hammer was terminated*, repeating what Mr. Donoval had indicated to Mr. Naylor on the telephone that day as well, namely, first, that Ms. Hammer was denying that the Severance Clause required a release of any non-wage related claims, second, that Ms. Hammer had not “prospectively” waived any non-wage claims when she entered into the Employment Agreement, and third that:

“if the City Of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact

language in the contract cited above and nothing more.” (Donoval Rehearing Aff., Para. 15)

Ms. Hammer rejected the Proposed Sun Valley Release and its unconditional waiver of “all” claims language, and instead submitted the replacement Supplemental Hammer Release, which did not release any claims that had not been intended when she entered into the Employment Agreement in June of 2008, including her IPPEA claims. Otherwise, Ms. Hammer would have merely signed the Proposed Sun Valley Release and the matter would have been resolved.

It was Sun Valley, not Ms. Hammer, that had the final decision that either a) Sun Valley could accept the Conditional Clause in the Supplemental Hammer Release and pay Ms. Hammer the “severance” knowing that Ms. Hammer would retain her IPPEA claims, or, b) Sun Valley could reject the conditional language in the Supplemental Hammer Release and simply not pay Ms. Hammer the “severance” until she provided the unconditional waiver of “all” claims that Mr. Naylor had been seeking. Whether or not Sun Valley was feeling the pressure of having to pay Ms. Hammer’s “severance” or be subject to treble damages under *Idaho Statute 45-615*, Sun Valley none-the-less chose to accept Ms. Hammer’s condition that she was not waiving any non wage or employee benefit related claims, including the IPPEA claims, and paid Ms. Hammer the “severance”. Because of Sun Valley’s actions in accepting the Supplemental Hammer Release with the conditional language inserted, and Sun Valley’s inactions in thereafter not rejecting the Conditional Clause or otherwise requiring that Ms. Hammer further clarify the “unconditional” nature of the Supplemental Hammer Release before Sun Valley paid Ms. Hammer the “severance” by direct deposit into her bank account, if any party is estopped in the matter, it should be Sun Valley.

Ms. Hammer was terminated by the Sun Valley City Council late in the day on January 19, 2012. There was no further Sun Valley City Council meetings between Ms. Hammer's termination on January 19, 2012 and when the "severance" was paid on January 24, 2012 in which Sun Valley Mayor DeWayne Briscoe or the Sun Valley City Council could have discussed or approved the Supplemental Hammer Release before paying Ms. Hammer's "severance" on January 24, 2012, after Ms. Hammer had rejected the Proposed Sun Valley Release¹⁷. There is no evidence in the record that Sun Valley Mayor DeWayne Briscoe or the Sun Valley City Council ever even saw the Supplemental Hammer Release with its conditional language, after Ms. Hammer had rejected the Proposed Sun Valley Release, by which they could even contemplate what its terms meant, and thus have been convinced that Ms. Hammer had actually waived "all" claims in return for payment of the "severance" payment.

Ms. Hammer gave the Supplemental Hammer Release to Sun Valley fully believing that she had made explicitly clear to Sun Valley that she was retaining claims she never intended to waive if she was ever terminated when she entered into the Employment Agreement, including any IPPEA claims. Ms Hammer heard nothing else from Sun Valley thereafter to clarify matters, and instead the next day the sum of \$66,935.53 was deposited directly into her checking account by Sun Valley, without further clarification. If anyone should be estopped in the matter, it should be Sun Valley.

There is no evidence in the record that any Sun Valley officials were ever actually provided the Original Hammer Release, the Proposed Sun Valley Release or the Supplemental Hammer Release, or any of the numerous communications between Mr. Donoval and Mr.

¹⁷ It should be noted that Mr. Naylor rejected the Original Hammer Release on Friday, January 20, 2012 (Donoval Rehearing Aff., Ex. 7). Mr. Naylor then drafted and sent Mr. Donoval the Proposed Sun Valley Release on a Saturday, January 21, 2012 (Donoval Rehearing Aff., Ex. 9). There is little chance, if any, that either Sun Valley Mayor DeWayne Briscoe or any of the members of the Sun Valley City Council ever saw the Proposed Sun Valley Release either.

Naylor, by Mr. Naylor, by which they could have possibly been deceived or even understand what was happening related to the issue of Ms. Hammer's severance. Nor is there any evidence that the Sun Valley City Council formally approved the payment of the "severance" to Ms. Hahmmer, as is required by *Idaho Statute 50-1017*¹⁸. With all of the inconsistencies related to the waiver issue, and the approval of the payment of the "severance" to Ms. Hammer, there are still numerous genuine issues of material fact as to whether Sun Valley was actually somehow deceived into believing that Ms. Hammer had waived "all" her claims when the Supplemental Hammer Release was submitted to Sun Valley, as opposed to just her wage related claims.

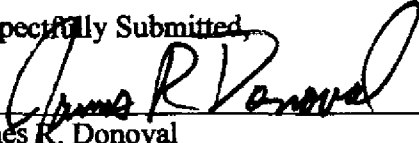
There are also genuine issues of material fact related to whether, at the time of the payment of the "severance" pay January 24, 2012, that by its actions in withholding income and employment taxes on the entire "severance" balance, Sun Valley, through Former Treasurer Frostenson, acknowledged that none of the "severance" payments were related to either liquidated damages or other civil claims, because if they were, Sun Valley was not supposed to have withheld either income or employment taxes on those portions of the "severance".

In order for the Court to have entered findings that Ms. Hammer was estopped from asserting that Ms. Hammer had not waived any non wage and benefit claims at summary judgment, including any IPPEA claims, there must be no genuine issues of material fact that Ms. Hammer "clearly and unequivocally" waived those claims, and that Sun Valley through its elected officials and official representatives (not its lawyer Mr. Naylor) believed that Ms. Hammer had also "clearly and unequivocally" waived any and all claims, not just her wage and

¹⁸ The Court should be fully aware, that the Sun Valley City Council could only take official action in resolving an issue like this, or spend any Sun Valley Funds, unless there was a formal motion in a public meeting. Pursuant to *Idaho Statute 50-1017*, which states that "all claims against the city shall be approved by the city council prior to the payment of such claims", Sun Valley was prohibited from paying Ms. Hammer the "severance" until the Sun Valley City Council had formally approved doing so. There is also no evidence in the record that Mr. Naylor had been formally authorized by the Sun Valley City Council to make decisions of this sort or to authorize the payment of the "severance" to Ms. Hammer.

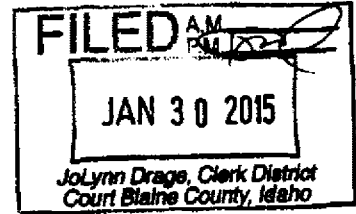
employee benefit claims. As has been described herein, Sun Valley placed no evidence in the record that between January 21, 2012 when Mr. Naylor was notified that Ms. Hammer rejected the Proposed Sun Valley Release and thereafter instead submitted the Hammer Supplemental Release to Mr. Naylor and Former Treasurer Frostenson, and when the "severance" was paid by direct deposit on January 24, 2012 without further discussion, that Sun Valley Mayor DeWayne Briscoe or the Sun Valley City Council ever even saw the Hammer Supplemental Release or understood what the terms of the Supplemental Hammer Release even said or meant for Sun Valley Mayor DeWayne Briscoe or the Sun Valley City Council to have relied upon it to claim they believed that Ms. Hammer had waive "all" claims against Sun Valley in return for the payment of the "severance". That being the case, it was error for the Court to conclude that estoppel principles applied and to have entered summary judgment based on estoppel.

Respectfully Submitted,



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Associated Attorney for Plaintiff Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

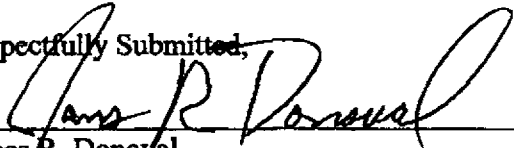
Defendants.

Case No. CV-2012-479

**MOTION FOR RECONSIDERATION OF
ENTRY OF SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Sharon R. Hammer, by and through her associated counsel for the purpose of reconsideration of entry of summary judgment James R. Donoval, and hereby seeks that this Honorable Court reconsider its Memorandum Decision On Motion For Summary Judgment of January 12, 2015, as is allowed pursuant to Rule 11(a)(2)(B) of the Idaho Rules Of Civil Procedure.

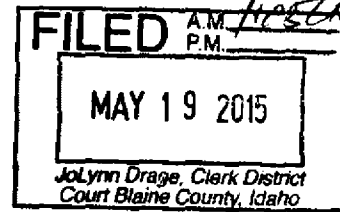
Respectfully Submitted,


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Associated Counsel For Ms. Hammer
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**SUN VALLEY'S OBJECTION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF SUMMARY
JUDGMENT**

Defendant, the City of Sun Valley, by and through its counsel, Naylor & Hales, P.C., hereby submits its Objection to Plaintiff's Motion for Reconsideration of Summary Judgment. Because this Court properly granted summary judgment to Defendant based on correct legal precedent, and because the new affidavits and arguments submitted by Plaintiff are irrelevant to that decision, reconsideration is not warranted.

I. INTRODUCTION

Sun Valley moved for summary judgment in this matter on November 18, 2014, which was granted on January 12, 2015, and subsequent judgment filed on January 16, 2015. (*See Memorandum Decision on Motions for Summary Judgment*, hereinafter “*Memorandum Decision*”) James Donoval, Plaintiff’s husband and frequent legal counsel, entered an appearance in this case on January 30, 2015, and filed the currently pending Motion for Reconsideration, due to Plaintiff’s prior counsel citing an ethical conflict and moving for withdrawal on that same day.¹ In conjunction with filing this motion for reconsideration, he also has submitted a memorandum and three new affidavits of Plaintiff, Wayne Willich, and himself, on behalf of Plaintiff’s motion. These new filings, however, have little that this Court has not already seen, as they simply reargue Plaintiff’s prior legal positions. The new affidavits, as per Plaintiff’s established litigation strategy throughout this case, simply attempt to take this Court’s well-reasoned decision and manufacture issues of material fact to avoid dismissal. However, the judgment of this Court should stand as a matter of law, and Plaintiff’s motion for reconsideration should be denied.

II. ANALYSIS

Plaintiff’s motion for reconsideration fails to even address the true basis stated for granting summary judgment: that due to the unambiguity of Plaintiff’s Employment Agreement and her Supplemental Release, Plaintiff clearly released “all claims” against the City of Sun Valley and therefore her IPPEA claim was part of that unambiguous release. (*Memorandum Decision*, p. 4-5)

¹Plaintiff’s prior counsel, Eric Swartz, later made it clear in hearing before this Court that he was to have “absolutely” nothing to do with the argument of this Motion for Reconsideration and that he was concerned with “having [his] name associated with Mr. Donoval in any fashion going forward.” (February 10, 2015 Hearing, 19:18-24, 37:14-21)

Instead, Plaintiff makes a brief—and incorrect—argument that reconsideration is necessary because “the Court did not describe whether it looked outside the four corners of the Supplemental Hammer Release because it was ambiguous, or because the Supplemental Hammer Release incorporated by reference the Employment Agreement.” (*Memorandum in Support of Plaintiff’s Motion for Reconsideration of Entry of Summary Judgment*, p. 8, hereinafter “*Reconsideration Memorandum*”) In actuality, this Court clearly stated, “[t]he release operates to ‘release the City of Sun Valley for any claims defined in Section 3.A of the City Administrator Employment Agreement.’ When looking to Section 3.A of the plaintiff’s agreement, it unambiguously provides that. . .” (*Memorandum Decision*, p. 5) It is abundantly clear that there was no ambiguity in the Supplemental Release drafted by Donoval, and that the Court simply applied the clear, specific, unambiguous direction of the language in that release to refer to Section 3.A. of the Employment Agreement for definition of the claims Plaintiff had released.

It is questionable how there could be any plausible finding of ambiguity in these documents. The Supplemental Release defines its own terms through referencing an exact section of Plaintiff’s own Employment Agreement. (*Memorandum Decision*, p. 2-3) This section of Plaintiff’s contract is not only relevant to the release, but requires this very release in order to complete the terms of Plaintiff’s termination without cause. (*Id.*) A good faith argument for ambiguity might have existed had Plaintiff’s Supplement Release not referenced that precise section of the Employment Agreement. Instead, Plaintiff herself included the language in her Supplemental Release that she was releasing “any claims defined in Section 3.A.” (*Id.*) Section 3.A. specifically defines those claims as “all claims against the City of Sun Valley.” (*Id.*) (emphasis added)

It is difficult to imagine a clearer, less ambiguous way to state this. The parties involved were sophisticated actors (two attorneys and a “fairly high level executive with the Boeing Company”)

who included the unambiguous terms of “any and all claims” and again later, “all claims,” in reference to the release required the Employment Agreement, and included an additional requirement that no severance be paid until Plaintiff executed a release in accordance with these terms. (*Memorandum Decision*, p. 2-3) The agreement Plaintiff signed is clear, unambiguous, and incorporated with a clear merger clause. This Court correctly determined that there was no ambiguity in Plaintiff’s Employment Agreement and Supplemental Release, and that in reading both documents together (as the language in each clearly intends), that Plaintiff released her IPPEA claim.

After largely ignoring this Court’s primary (and controlling) reason for granting summary judgment, Plaintiff focuses the majority of her arguments for reconsideration on the secondary, additional reasons why her claim failed. First among these is that her allegation that the Court failed to properly acknowledge the intent of the parties as established through multiple affidavits. Plaintiff argues that the Court mistakenly “ignored” the conditional clause in the Supplemental Release which she argues requires this Court to consider the intent of the parties when the Employment Agreement was entered into in 2008. (*Reconsideration Memorandum*, p. 10) This Court had no need to give authority to superfluous or duplicative language in a non-contractual document. The Supplemental Release was nothing more than compliance with the specific contractual requirement found in Plaintiff’s Employment Agreement. It was not a new contract and had there been any ambiguity in its terms, it still would have been unenforceable against Defendant because it neither signed nor drafted it.

In addition, it specifically states that Plaintiff is releasing “all claims as defined in Section 3.A. of the Employment Agreement,” as intended in 2008. “Where preliminary negotiations are consummated by written agreement, the writing supercedes all previous understandings and the intent of the parties must be ascertained from the writing.” *Valley Bank v. Christensen*, 119 Idaho

496, 498 (1991) (emphasis added). The intent language in the Supplemental Release is superfluous because the “intent of the parties must be ascertained from the writing,” not from the Plaintiff’s latest affidavits tailor-made to retroactively modify that written agreement. *Id.* Plaintiff’s tactics are the very reason why the parol evidence rule exists, and why summary judgment is still appropriate in this case.

Because the Employment Agreement and Supplemental Release are unambiguous, all Plaintiff’s additional affidavits and legal memoranda regarding the alleged intent of the parties are irrelevant. As this Court stated in its decision, “the Court declines to consider the parties’ subjective intent, where the contract is clear.” (*Memorandum Decision*, p. 5) Even if this Court were to look to the intent of the parties, pursuant to *Opportunity, LLC v. Ossewarde*, 136 Idaho 602 (2002), “the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent.” (emphasis added). Looking to other extrinsic evidence is only appropriate when the language of the writing is unclear. *Id.* And all Plaintiff’s purported factual evidence as to why she did not release her IPPEA claim stem from inadmissible parol evidence of her and Willich’s intent prior to executing the Employment Agreement. Thus, the latest affidavits which state the thoughts and opinions of Plaintiff, Donoval, and Willich leading up to the execution of the Employment Agreement are irrelevant at best, and a sham at worst.

Further arguing intent of the parties, Plaintiff alleges that the multiple communications between the Defendant and Donoval prior to the execution of the Supplemental Release put Defendant on notice that Plaintiff was not to specifically release any non-wage claims. (*Reconsideration Memorandum*, p. 20-23) Again, Plaintiff fails to grasp the clear and unambiguous language of the Employment Agreement and the purpose of the Supplemental Release. It is irrelevant what Donoval told Mr. Naylor throughout the negotiation process, as the Supplemental Release,

drafted by Donoval and signed by Plaintiff, clearly indicates that it was to release the claims “as defined in Section 3.A. of the Employment Agreement.” The alleged intent communicated prior to the execution of the release is irrelevant to the knowledge of Defendant, because Defendant has always objectively relied on the clear and unambiguous language of the Employment Agreement. The Employment Agreement states that Plaintiff’s release would relate to, “any and all claims” and “all claims,” and this is clear and unambiguous. Plaintiff’s Supplemental Release pointed directly to that language, and so any other negotiations, statements, or demands surrounding the Supplemental Release were immaterial as the release incorporated the contractual language of the Employment Agreement.

Another secondary ground for granting summary judgment was that Plaintiff received appropriate consideration for her release of all claims against the City of Sun Valley. Again, the majority of Plaintiff’s argument is not new, and continues the incorrect assumption that Plaintiff’s “severance” payment was to be paid immediately upon her termination without cause when in actuality it was conditional on her execution of the release for “all claims” prior to receiving that severance. The majority of the cases cited by Plaintiff establish clearly that severance payments are only considered wages when contractually provided and no additional conditions were contractually required of the employee. Defendant was not contractually obligated to pay Plaintiff any severance until she executed a release for “all claims against the City of Sun Valley.” Thus, although termed a “severance,” the use of that term alone, no matter how many times used, is not determinative of what the payment actually was classified by the contract itself.

Interestingly, her argument regarding consideration includes two cases not raised previously that actually support Defendant’s position and not her own argument. *Parker v. Underwriters Laboratories, Inc.*, 140 Idaho 517 (2004), is a case which is remarkably similar to Plaintiff’s, in that

an employee who was being terminated was required to sign a release from “all claims relating to her employment or subsequent termination,” before receiving an agreed upon severance package. *Id.* at 521. The total amount she was to receive was, “based in part on Parker’s base salary and years of continuous employment with Underwriters.” *Id.* The “plain language” of the release and other documents that Parker signed made it clear that she would not receive this severance package unless she signed the release. *Id.* Even if Parker rejected the general release, she was guaranteed two weeks severance pay regardless. *Id.* She then signed the release and received weekly payments. *Id.* In receiving unemployment benefits, Parker failed to report her monthly severance payments to the Idaho Department of Labor as income, which after they discovered this, brought action against her to recover the benefits already provided. *Id.* at 518. The Idaho Supreme Court did not consider that severance payment to be wages even though it was based on her salary and length of past service, because the severance was only to paid upon the signed release of any and all claims of the employee, and thus was not actually “severance pay” only in return for services previously provided. *Id.* at 522.

The Idaho Supreme Court in *Parker* cited to *Moore v. Digital Equipment Corp.*, 868 P.2d 1170 (Colo.Ct.App. 1994), as support for its ruling that Parker’s payments were not considered “severance pay” or wages. Similarly in that case, the employee received a lump-sum “severance allowance” payment, with the amount therein based on the length of time the employee had worked, in exchange for signing a release for “any and all claims of any kind or description.” *Id.* at 1171. This payment was then claimed by the State as potential wages for purposes of unemployment benefits. *Id.* at 1170. The Colorado Court of Appeals disagreed and held as follows:

Here, the written agreement between the parties demonstrates that the employer's primary purpose in making a lump sum payment was, as the referee found, not to provide a salary substitute to secure the employee's economic well-being during any period of unemployment.

While there is self-serving language to this effect in the agreement that was unilaterally prepared by the employer, had this been the employer's primary purpose for the payment, it would not have been conditioned on the employee's execution of the written release.

Further, a severance allowance is a payment made to an employee in return for services previously provided. Hence, payment made by an employer to settle a claim asserted by an employee, even though paid on a weekly basis, is not a payment for services rendered.

An employee has no obligation, as a part of the services he or she is to provide to the employer, to renounce legal rights possessed by him or her.

Id. at 1172-73 (emphasis added, internal citations omitted).

Almost identically to *Parker and Moore*, Plaintiff's Employment Agreement set forth a payment which was defined with the term "severance," and was based on a portion of her base salary, but was only to be paid on execution of a release of "all claims against the City of Sun Valley." As both cases above established, the payments received, no matter the semantic distinction, were not considered wages, as they were received in valid consideration for the employees executing releases for all claims against their employers. When the receipt of any severance payment is conditioned upon the execution of a release of legal rights, that payment is not wages in consideration of prior service rendered, but rather received in consideration of the release of those legal rights. Thus, Plaintiff's payment was valid consideration and her argument is incorrect.

Finally, Plaintiff alleges that this Court acted improperly when it raised the question of judicial estoppel against Plaintiff's changing legal positions, allegedly *sua sponte*. (*Reconsideration Memorandum*, p. 23-30) However, this issue was not raised by the Court exclusively of its own volition, but the substance of the judicial estoppel argument was in fact raised by Defendant and briefed by the parties throughout, while admittedly not using the specific term "judicial estoppel." In Defendant's initial briefing, it raised possible grounds for summary judgment in that Plaintiff had

accepted the severance payment and had executed the required release, and had thus acknowledged that she had been terminated without cause. (*Corrected Memorandum in Support of Sun Valley's Motion for Summary Judgment*, p. 15-16) It then raised the issue that Plaintiff was now seeking double-recovery for keeping the severance payment and then also bringing her IPPEA claims against Defendant. (*Id.*) Further, Defendant also argued that should the Court consider Plaintiff's IPPEA claim, that she would not be able to establish a prima facie case because Defendant had a legitimate, non-retaliatory, non-pretextual basis to terminate her as it did so without cause. (*Id.* at 24-26)

In response, Plaintiff specifically stated multiple times in her response that she disputed being terminated from her position at Sun Valley under the "without cause" provision of her Employment Agreement. (*Plaintiff's Response to Sun Valley's Motion for Summary Judgment*, p. 2-5) She further argued specifically that she had a prima facie case for retaliation in violation of the IPPEA because Defendant's position that Plaintiff was terminated without cause was pretextual as "ample evidence exists that Ms. Hammer's termination was not 'without cause' and that the stated reasons are mere pretext." (*Id.* at 24-27) Defendant's reply then fully addressed Plaintiff's allegation that she was not fired without cause, and argued that because she signed the release, and accepted the severance payment, that this indicated that she clearly acknowledged in writing that she was in fact terminated "without cause." (*Sun Valley's Reply Memorandum in Support of Summary Judgment*, p. 9-10)

The relevant portions of this Court's decision regarding judicial estoppel mirrored the arguments made by counsel. The Court indicated that as Plaintiff accepted the severance package of her own choice, and that the severance package was only available to her if she was terminated without cause, that she acknowledged that she was terminated without cause. (*Memorandum Decision*, p. 8) It then recognized that because she had previously made this choice to accept the payment, that she was judicially estopped from making the argument that she was terminated for

cause. (*Id.*) Subsequently, the Court simply refused to consider whether she was actually terminated for cause. (*Id.* at 9) Contrary to Plaintiff's argument here, Plaintiff had ample opportunity to argue the substance of judicial estoppel, and did so, even though neither party used that specific term in their argument. This issue was not raised by the Court *sua sponte*, and therefore reconsideration is not necessary on this issue.

III.

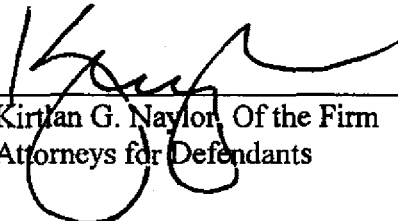
CONCLUSION

As shown above, summary judgment was appropriately granted to Defendant and reconsideration of that decision is unnecessary, and Plaintiff's motion should be denied in its entirety.

DATED this 19th day of May, 2015.

NAYLOR & HALES, P.C.

By


Kirtlan G. Naylor, Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

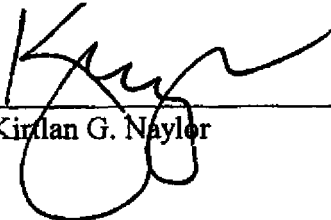
I HEREBY CERTIFY that on the 19th day of May, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
4110 Eaton Ave., Ste. D
Caldwell, ID 83607
Attorney for Plaintiff

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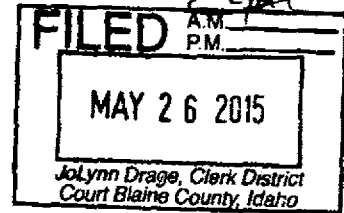
☒ U.S. Mail
☒ Hand Delivered
☐ Fax Transmission: 853-0117
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Kirilan G. Naylor

8406_47 Obj to Reconsideration of MSJ.wpd

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**REPLY MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ENTRY OF
SUMMARY JUDGMENT**

**1) CONTRARY TO SUN VALLEY'S ASSERTIONS IN ITS RESPONSE, THE COURT
FAILED TO COMPLY WITH THE IDAHO SUPREME COURT'S DIRECTIONS IN
REGARDS TO A SUMMARY JUDGMENT REQUEST RELATED TO A WAIVER**

In analyzing whether summary judgment related to a waiver should be granted, as is the case herein, the Idaho Supreme Court has directed that a district court act as follows:

First, the Idaho Supreme Court has directed that "fact allegations contained in an affidavit opposing a motion for summary judgment *must be accepted as true* (emphasis added)." (*Sutton v. Brown*, 85 Idaho 104 @109, 375 P.2d 990 (Id. Sup.Ct. 1962)).

Second, the Idaho Supreme Court has directed, "this court has repeatedly stated that upon a motion for summary judgment *all doubts* (emphasis added) are to be resolved against the moving party" (*Crane v. Banner*, 93 Idaho 69 @73-74, 455 P.2d. 313 (Id. Sup.Ct. 1969)).

Third, in regards to a waiver, the Idaho Supreme Court has directed that the existence of waiver “*is foremost a question of intent* (emphasis added). In order to establish waiver *the intention to waive must clearly appear* (emphasis added).” (*Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778 @ 782, 839 P.2d 1192 (Id. Sup.Ct. 1992)).

And, finally, the Idaho Supreme Court has directed that the existence of waiver “is a question of fact, and if there is *any* (emphasis added) substantial evidence in the record”, regarding the existence or non-existence of a waiver, “*it is for the trier of fact*” (emphasis added) (i.e. not the district court) to determine whether the evidence establishes a waiver or not (*Riverside Development Co. v. Ritchie*, 103 Idaho 515 @519, 650 P.2d 657 (Id. Sup.Ct. 1982)).

Nothing in Sun Valley’s Response contradicts these explicit findings of the Idaho Supreme Court or contradicts the necessity for the Court to have followed the directives of the Idaho Supreme Court in regards to the waiver issues presented in this matter.

Although Ms. Hammer recognizes and appreciates the Court’s efforts, and its struggles in making findings in this matter, as was explained in Ms. Hammer’s Memorandum In Support Of Motion For Reconsideration, and is further described herein, the Court has unwittingly rushed to judgment by violating every one of the directives from the Idaho Supreme Court described above in entering the Summary Judgment Decision. Most importantly, the Court has ignored the extensive communications to Sun Valley, submitted to its attorney Kirtlan Naylor (“Mr. Naylor”), making it clear at the time that the Supplemental Hammer Release was submitted to Sun Valley that Ms. Hammer was rejecting Mr. Naylor’s demands that she sign an “unconditional” release waiving “all claims”, and that she was instead retaining any non-wage claims against Sun Valley, including any IPPEA related claims, even if Sun Valley chose to pay

Ms. Hammer the “severance” payments under the Severance Clause of the Employment Agreement.

On January 24, 2012, Sun Valley paid Ms. Hammer by direct deposit the sum of \$66,935.53, without any communications to Ms. Hammer that by doing so Ms. Hammer had somehow waived any non-wage claims. The payment of the “severance” included withholding of both income and *employment taxes* on the entire amount. Both a) Sun Valley’s withholding of employment taxes on the entire amount of the “severance” (admitting that the “severance” was entirely payment for wages, not liquidated damages or settlement of other non-wage claims which would not be subject to employment tax withholdings), and, b) Sun Valley’s unilaterally deciding to pay Ms. Hammer the “severance” by direct deposit without clarifying that both Sun Valley and Ms. Hammer were in agreement as to whether she was waiving any non-wage claims - are genuine issues of material fact related to the circumstances surrounding the submission of the Supplemental Hammer Release which the Court did not take into consideration in entering summary judgment, and which (among other reasons), on reconsideration, requires the Court to reverse its summary judgment findings.

The uncontested facts submitted in Affidavits by Ms. Hammer which the Court was required to accept as true for summary judgment purposes (see *Sutton v. Brown*), and instead ignored, included:

a) The Court failed to accept as true the un-contradicted Affidavits of Ms. Hammer and Former Mayor Willich that neither intended that Ms. Hammer would be required to waive any non-wage claims as part of the Severance Clause of the Employment Agreement should Ms. Hammer ever be terminated “without cause” and be paid “severance” when the Employment Agreement was negotiated in 2008 (see *Sutton v. Brown*; *Hecla Mining v. Star-Morning*);

b) The Court failed to accept as true the un-contradicted Affidavits of Ms. Hammer and Mr. Donoval that Ms. Hammer’s intent was not to waive any non-wage claims when she rejected Sun Valley’s “unconditional” Proposed Sun Valley Release and instead submitted the

“conditional” Supplemental Hammer Release to Sun Valley, after submitting numerous correspondences to Sun Valley confirming such (see *Sutton v. Brown*; *Hecla v. Star-Morning*);

c) The Court failed to recognize that the uncontroverted facts in Ms. Hammer’s and Mr. Donoval’s Affidavits surrounding the rejection of the “unconditional” Proposed Sun Valley Release and the acceptance of the “conditional” Supplemental Hammer Release by Sun Valley and payment of the “severance” by direct deposit into Ms. Hammer’s bank account, which included that Sun Valley withheld employment taxes on the entire “severance” payments, lead Ms. Hammer to believe that Sun Valley had acknowledged that Ms. Hammer was retaining her non-wage and IPPEA claims, as opposed to Sun Valley’s subsequent claims that instead Ms. Hammer lead Sun Valley to believe that she was waiving “all” claims (see *Sutton v. Brown*);

d) The Court violated the Idaho Supreme Court’s direction that where there are *any facts* submitted by the opponent of summary judgment which prohibits the entry of summary judgment, the denial of summary judgment was, and is, mandated (see *Riverside Development v. Ritchie*); and,

e) The Court violated the directives of the Idaho Supreme Court that if there are *any doubts* as to the entry of summary judgment in this matter, they were to be resolved against Sun Valley, not in Sun Valley’s favor (see *Crane v. Banner*).

As the Court failed to follow the directives of the Idaho Supreme Court in regards to entering summary judgment related to the issue of a purported waiver, and in entering the Summary Judgment Decision has ignored and failed to accept facts alleged in the Affidavits submitted by Ms. Hammer as being true for the purpose of summary judgment, it is Ms. Hammer’s position that the Court is required to vacate its findings in regards to the Summary Judgment Decision and deny Sun Valley’s request for summary judgment in the matter.

II) CONTRARY TO SUN VALLEY’S DENIALS, THE COURT WAS OBLIGATED TO ACCEPT AS TRUE THE SWORN-TO FACTS SUBMITTED BY MS. HAMMER

It is clear that in entering the Summary Judgment Decision, the Court failed to thoroughly review and understand the facts surrounding the “conditional” nature of Ms. Hammer’s submission of the Supplemental Hammer Release to Mr. Naylor, and Sun Valley’s payment of the “severance” by direct deposit to Ms. Hammer’s bank account. The Court, apparently, instead believed that Sun Valley provided Ms. Hammer with a release that Ms.

Hammer simply and blindly signed without objection, and voluntarily accepted the payment of “severance” in return. The facts asserted by Ms. Hammer in Affidavits that have been submitted, *which must be accepted as true for purposes of summary judgment* (see *Sutton v. Brown* @109), tell a much different story than what has been argued by Sun Valley (without any affidavits to back up its assertions), and what the Court, in entering the Summary Judgment Decision, apparently accepted as being true. For summary judgment purposes, the Court was, and is, required accept as true Ms. Hammer’s version of events – an obligation that the Court, regardless of its best intentions, violated.

Sun Valley, Through Its Attorney Mr. Naylor, Was Clearly Made Aware That Ms. Hammer Was Not Waiving Any Non-Wage Claims And Considered Any “Severance” Payments That Were To Be Made As Entirely Wages, And Not Related To The Release Of Any Non-Wage Claims, When Sun Valley Chose To, None-The-Less, Pay Ms. Hammer The “Severance” Anyway, By Direct Deposit

In its Response, Sun Valley provided no additional factual information or Affidavits in opposition to Ms. Hammer’s Motion For Reconsideration. Thus, the unopposed facts described in the Affidavits submitted by Ms. Hammer in opposition to Sun Valley’s summary judgment request, and in support of her Motion For Reconsideration, which the Court *must accept as true for purposes of summary judgment* (see *Sutton v. Brown* @109), but which the Court mostly ignored in the Summary Judgment Decision, indicate as follows:

a) On January 13, 2012, Mr. Donoval sent Mr. Naylor an email specifically stating “*her contract does not require her to waive any tort or any other non contract claims she may have with the City.* (emphasis added)” (Donoval Rehearing Aff., Para. 11, Exhibit 1).

b) On January 14, 2012, Mr. Donoval sent Mr. Naylor an email specifically stating “*regardless of whether you terminate her “without cause” – she has a property interest in her employment which we will immediately seek to enforce. And of course I will immediately re-file the IPPEA claims.* (emphasis added).” (Donoval Rehearing Aff., Para. 12, Exhibit 2).

c) On January 18, 2012, in a recorded telephone conversation, Mr. Donoval specifically told Mr. Naylor that *“even if Sun Valley terminates Ms. Hammer “without cause” that she was not required to waive any of her non service or wage types of claims against Sun Valley, including IPPEA claims, even if she was paid her severance pay under the Severance Clause.”* (Donoval Rehearing Aff., Para. 14)¹

d) Immediately after the January 18, 2012 telephone call with Mr. Naylor, Mr. Donoval submitted a letter to Mr. Naylor stating *“As I have stated, the causes of action Ms. Hammer possesses for tort, including the underlying harassment allegations against Council Member Ribí and several other claims (emphasis added), do not arise “from a termination”, they arise out of separate incidents. Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement (emphasis added). So as I have stated, if the City of Sun Valley proposes to terminate Ms. Hammer without cause and pay her the severance payment in the contract, she will only sign a waiver that states the exact language in the contract cited above and nothing more.”* (Donoval Rehearing Aff., Para. 15, Exhibit 5)

e) On January 19, 2012, Ms. Hammer was terminated “without cause” by Sun Valley pursuant to the Severance Clause of the Employment Agreement. (Donoval Rehearing Aff., Para. 16; Hammer Rehearing Aff., Para. 15)

f) On January 20, 2012, Ms. Hammer issued her letter to Sun Valley demanding full payment of her “severance” required under the Severance Clause of the Employment Agreement within forty eight (48) hours, or that treble damages would be required to be paid pursuant to Idaho Statute 45-606 and 45-615 (Hammer Rehearing Aff., Para. 16, Exhibit 2). The letter included a signed “Release Pursuant To City Administrator Employment Agreement” (Hammer Rehearing Aff., Para. 16, Exhibit 2) (the “Original Hammer Release”) which merely repeated the language of the Severance Clause of the Employment Agreement, as Mr. Donoval had told Mr. Naylor it would in the letter of January 18, 2012 (see Donoval Rehearing Aff., Para. 15, Exhibit 5).

g) In two separate communications to Mr. Naylor (Donoval rehearing Aff., Para. 13, Exhibit 3) (Donoval Rehearing Aff., Para. 21, Exhibit 10), Mr. Donoval also asserted that if Sun Valley did not pay Ms. Hammer the “severance” within 48 hours, without requiring any limiting language related to her non-wage claims², Sun Valley would be liable for treble damages pursuant to Idaho Statute 45-615, which considering that the total amount due to Ms. Hammer was approximately \$83,000 (see Donoval Rehearing

¹ Mr. Naylor recorded this telephone conversation (see Donoval Rehearing Aff., Para. 14, Exhibit 4) and has failed to release the transcript of the conversation. Mr. Naylor has also failed to file an Affidavit denying that Mr. Donoval made these statements to Mr. Naylor. For purposes of summary judgment, the Court must accept this statement in Mr. Donoval’s Affidavit as being true (see *Sutton v. Brown @109*), and that Mr. Naylor was aware of Ms. Hammer’s claims that she was not releasing any IPPEA claims by accepting the “severance” payment.

² The email of January 21, 2012 from Mr. Donoval to Mr. Naylor specifically states “You can’t put limiting language on payments.” (Donoval Rehearing Aff., Para. 21, Exhibit 10)

Aff., Para. 30, Exhibit 13), would have resulted in Sun Valley having to pay Ms. Hammer \$250,000³.

h) On January 20, 2012 and January 21, 2012 (a Saturday), Mr. Naylor submitted two emails to Mr. Donoval, which included that Sun Valley was rejecting the Original Hammer Release as written (Donoval Rehearing Aff., Para. 18, Exhibit 7), that Ms. Hammer must add specific language to the Original Hammer Release of "I release all claims against the City Of Sun Valley" or Sun Valley would not pay Ms. Hammer the "severance" (Donoval Rehearing Aff., Para. 18, Exhibit 7), and that if the sentence "I release all claims against the City Of Sun Valley" was not added to the Original Hammer Release that Sun Valley would not "consider that she has complied with the agreement." (Donoval Rehearing Aff., Para. 19, Exhibit 8)

i) In a separate email late in the day on Saturday January 21, 2012, Mr. Naylor submitted the Proposed Sun Valley Release which included language demanded by Mr. Naylor that "I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City Of Sun Valley" or Sun Valley would not pay Ms. Hammer the "severance". (Donoval Rehearing Aff., Para. 20, Exhibit 9)

j) After discussions with Mr. Donoval, Ms. Hammer refused to sign the Proposed Sun Valley Release specifically because it did not affirm that Ms. Hammer was retaining her non-wage claims against Sun Valley. (Hammer Rehearing Aff., Para. 18-21) (Donoval Rehearing Aff., Para. 22-23)

k) Based upon the directions of Ms. Hammer, on January 23, 2012, Mr. Donoval sent an email to Mr. Naylor indicating that Ms. Hammer would not be signing the Proposed Sun Valley Release submitted to Ms. Hammer by Mr. Naylor. (Hammer Rehearing Aff., Para. 21; Donoval Rehearing Aff., Para. 24, Exhibit 11)

l) On January 23, 2012, on behalf of Ms. Hammer, Mr. Donoval submitted the Supplemental Hammer Release to Mr. Naylor which stated that Ms. Hammer was only waiving those claims she "intended when the City Administrator Agreement was entered into". (Donoval Rehearing Aff., Para. 28, Exhibit 12) At the time, Ms. Hammer and Mr. Donoval believed by submitting the Supplemental Hammer Release with the "conditional" language that Ms. Hammer made clear that she was not waiving any of the non-wage claims in acceptance of the "severance" payments, as had been clearly described to Mr. Naylor in previous communications. (Hammer Rehearing Aff., Para. 22-24; Donoval Rehearing Aff., Para. 25-28, Exhibit 12) Contrary to Mr. Naylor's demands, the Supplemental Hammer Release did not include the "I release all claims against the City Of Sun Valley" or "I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City Of Sun

³ Mr. Donoval's email of January 16, 2012 (Donoval Rehearing Aff., Para. 13, Exhibit 3), estimated that treble damages for Sun Valley's failure to pay Ms. Hammer the "severance" would be about \$200,000. In reality, based on the final "severance" and benefit payments of \$82,537.45 (Donoval Rehearing Aff., Para. 30, Exhibit 13), the treble damages amount would have actually been closer to \$250,000.

Valley” Mr. Naylor demanded before Sun Valley would pay Ms. Hammer the “severance”. (see emails of Mr. Naylor, Donoval Rehearing Aff., Para. 19-20, Exhibit 8 and 9)

m) On January 23, 2012, Mr. Donoval met with former Sun Valley Treasurer Michelle Frostenson (“Former Treasurer Frostenson”), to review the amounts Ms. Hammer was to be paid as her final “severance” payments (Donoval Rehearing Aff., Para. 30, Exhibit 13). At that meeting, Former Treasurer Frostenson confirmed to Mr. Donoval that all “severance” payments which were to be paid to Ms. Hammer due to her termination “without cause” were “wages”, subject to employment tax withholding, not payment for liquidated damages or any non-wage claims which would not have been subject to employment tax withholdings⁴. (Donoval Rehearing Aff., Para. 30-32).

n) Based on the discussions with Former Treasurer Frostenson, and believing that the issue of whether all of the “severance” payments to be made to Ms. Hammer pursuant to the Severance Clause of the Employment Agreement was for “wages”, as opposed to liquidated damages or non-wage claims, on behalf of Ms. Hammer, Mr. Donoval approved the Severance Pay Voucher. (Donoval Rehearing Aff., Para. 30-32)

o) On January 24, 2012, without any further communications to Mr. Donoval or Ms. Hammer from either Mr. Naylor, Former Treasurer Frostenson or any other Sun Valley officials, \$66,935.53 was direct deposited in Ms. Hammer’s bank account, without any forewarning to Ms. Hammer (Hammer Rehearing Aff., Para. 25; Donoval Rehearing Aff., Para. 33, Exhibit 14). The \$66,935.53 payment included withholding of employment taxes on the entire “severance” payments made to Ms. Hammer, as had been affirmed by Former Treasurer Frostenson and as was indicated on the Severance Pay Voucher. (Donoval Rehearing Aff., Para. 30, Exhibit 13)

In making its findings in the Summary Judgment Decision that Ms. Hammer had somehow lead Sun Valley to believe that she had waived any non-wage claims, the Court ignored that 1) Mr. Donoval submitted at least four (4) separate communications to Mr. Naylor confirming that Ms. Hammer was not waving any non-wage claims should Ms. Hammer be terminated “without cause” and be paid the “severance” under the Employment Agreement (paragraphs a – d above); 2) Mr. Naylor demanded that Ms. Hammer provide explicit language in a release that said that she was waiving “all claims” or sign the Proposed Sun Valley Release

⁴ See Donoval Rehearing Aff., Para. 32. *“At the time, Former Treasurer Frostenson agreed with me that all of the “severance” payments that Ms. Hammer was to receive pursuant to the Severance Clause of the Employment Agreement and listed in the Severance Pay Voucher were “wages” subject to employment and income tax withholdings, and not “liquidated damages” or other damages”.*

which included that language (paragraphs h – i above); 3) Ms. Hammer rejected Mr. Naylor's demands to provide a release which explicitly stated that she waived "all claims", and instead submitted the "conditional" Supplemental Hammer Release which refused to do so (paragraphs j – l above); 4) Former Treasurer Frostenson acknowledged that the "severance" that was being paid to Ms. Hammer was all "wages", and not related to liquidated damages or non-wage claims (paragraphs m – n above); 5) Sun Valley paid the "severance" by direct deposit, notwithstanding that Ms. Hammer refused to submit a release admitting that the "severance" was in settlement of "all claims" as had been demanded by Mr. Naylor (Hammer Rehearing Aff., Para. 21-24; Donoval Rehearing Aff., Para. 22-28, Exhibit 12); and, 6) the payment of "severance" to Ms. Hammer included withholding of employment tax on all payments (Donoval Rehearing Aff., Para. 30, Exhibit 13), thus admitting that the "severance" was totally "wages" and not liquidated damages or other non-wage claims. With all of these verified facts in the record confirming that Ms. Hammer did not intend to waive any non-wage claims related to her termination and that Sun Valley acted in a way that confirmed that Sun Valley also accepted that Ms. Hammer had not waived any non-wage claims in payment of the "severance", at a minimum, there are genuine issues of material fact which prohibit the entry of summary judgment.

III) THE FAILURE OF SUN VALLEY TO SUPPORT ITS CLAIMS WITH AFFIDAVITS THAT SUN VALLEY BELIEVED THAT MS. HAMMER HAD WAIVED ANY NON-WAGE CLAIMS BY THE SUBMISSION OF THE SUPPLEMENTAL HAMMER RELEASE, REQUIRES THE DENIAL OF SUN VALLEY'S SUMMARY JUDGMENT REQUEST

In response to the Affidavits filed in support of Ms. Hammer's original Response to Sun Valley's Motion for Summary Judgment, and in support of her Motion For Reconsideration, Sun Valley has filed no Affidavits explaining any of the circumstances surrounding the submission of

the Supplemental Hammer Release and the payment of the "severance" to Ms. Hammer in January of 2012, which include that:

a) Sun Valley failed to supply any Affidavits that show that Mr. Naylor provided any of the communications submitted to Mr. Naylor by Mr. Donoval regarding the issue of the "severance" payments or that Ms. Hammer was retaining any non-wage claims against Sun Valley if she was paid "severance", including her IPPEA claims, to any Sun Valley officials or that any Sun Valley officials were aware of these communications.

b) Sun Valley failed to supply any Affidavits that indicate that Sun Valley officials directed Mr. Naylor to draft and issue the Proposed Sun Valley Release, that any Sun Valley officials were aware of what the Proposed Sun Valley Release stated, or that Mr. Naylor even submitted the Proposed Sun Valley Release to Mr. Donoval on Saturday, January 21, 2012 on their behalf.

c) Sun Valley failed to supply any Affidavits that indicate that Mr. Naylor communicated to any Sun Valley officials that Ms. Hammer had rejected the Proposed Sun Valley Release submitted to Ms. Hammer by Mr. Naylor.

d) Sun Valley failed to supply any Affidavits which explained why Sun Valley accepted a release (the Supplemental Hammer Release) which did not include the language of "I release all claims against Sun Valley" demanded by Mr. Naylor for payment of the "severance", and still paid the "severance" to Ms. Hammer.

e) Sun Valley failed to supply any Affidavits that indicate that Mr. Naylor provided the Supplemental Hammer Release to any Sun Valley officials or that any Sun Valley officials were aware that the Supplemental Hammer Release had even been provided to Mr. Naylor, upon which any Sun Valley officials could have made any determinations or decisions related to the intent of the Supplemental Hammer Release.

f) Sun Valley failed to supply any Affidavits from either Former Treasurer Frostenson or any other Sun Valley officials denying that Sun Valley considered that the entire "severance" payments made to Ms. Hammer were "wages" as opposed to liquidated damages or related to other claims, or why Sun Valley withheld employment taxes on the entire "severance" payments made to Ms. Hammer, if a portion of the "severance" was actually for liquidated damages or in settlement of other non-wage claims, as is now claimed by Sun Valley.

g) Sun Valley has failed to supply any Affidavits indicating which Sun Valley official or officials actually authorized that the direct deposit of the "severance" be made to Ms. Hammer's bank account, or on what information they relied before doing so.

The failure of Sun Valley to enter any Affidavits into the record explaining the conduct of Sun Valley officials related to the circumstance surrounding the rejection by Ms. Hammer of

the “unconditional” Proposed Sun Valley Release, and the submission to, and acceptance of, the “conditional” Supplemental Hammer Release by Sun Valley, leaves the Court with no basis to determine who actually made the decision to make a direct deposit of the “severance” payments into Ms. Hammer’s bank account – or more importantly - why. In fact, there is no factual evidence in the record that any Sun Valley officials, other than Mr. Naylor, were aware of the rejection of the Proposed Sun Valley Release, had actually seen the Supplemental Hammer Release, or believed that Ms. Hammer had waived her non-wage claims by the submission of the Supplemental Hammer Release to Mr. Naylor. At this juncture, except for Former Treasurer Frostenson, the record shows that Mr. Naylor was the only Sun Valley related individual with any knowledge of the circumstances surrounding the submission of the Supplemental Hammer Release and the payment of the “severance” to Ms. Hammer by direct deposit⁵.

For all the Court knows, Sun Valley officials paid Ms. Hammer the “severance” because they were lead by Mr. Naylor to believe that Ms. Hammer had signed the “unconditional” Proposed Sun Valley Release which Ms. Hammer had rejected, rather than having made clear to Mr. Naylor that such was not the case and instead submitting the “conditional” Supplemental Hammer Release to Sun Valley. And even if the decisions were made by Sun Valley officials rather than unilaterally by Mr. Naylor, for all the Court knows Sun Valley officials paid Ms. Hammer the “severance” by direct deposit because they were more worried about having to pay Ms. Hammer treble damages under Idaho Statute 45-606 and 45-615 than that they were convinced that Ms. Hammer had waived any non-wage claims – as has been argued by Sun

⁵ The only persons who held the authority to make decisions regarding the acceptance of the Supplemental Hammer Release and the payment of the “severance” by direct deposit to Ms. Hammer was the entire Sun Valley City Council by formal vote (which is nowhere to be found in the record) or by Sun Valley Mayor DeWayne Briscoe (which is also nowhere to be found in the record). Clearly, Mr. Naylor or Former Treasurer Frostenson had no authority to make decisions to accept the Hammer Supplemental Release or to make the “severance” payment by direct deposit without the requisite approval of Sun Valley Mayor DeWayne Briscoe or the Sun Valley City Council.

Valley. With all due respect, the Court cannot enter summary judgment based on inferences and assumptions about what Sun Valley officials did or not believe, or did or did not do, which are not in the record.

Contrary to the arguments of Sun Valley, the verified facts in the record make clear that Mr. Naylor, the authorized representative of Sun Valley, was painfully aware of Ms. Hammer's assertions and belief that she was not waiving any of her non-wage claims by the rejection of the "unconditional" Proposed Sun Valley Release and the submission of the "conditional" Supplemental Hammer Release. There is no evidence that Mr. Naylor forwarded those communications to Sun Valley officials, or that Sun Valley officials were aware of Ms. Hammer's refusal to waive any non-wage claims in return for the payment of "severance". Without any Affidavits of what Sun Valley officials understood related to the submission of the Supplemental Hammer Release, the Court simply cannot come to the conclusion, at summary judgment, regarding what Sun Valley officials beliefs were as to whether Ms. Hammer intended to, or actually did, waive any rights to pursue non-wage claims by the submission of the Supplemental Hammer Release with the limiting language, especially considering that Ms. Hammer's assertions that she did not intend to do so have been submitted in a sworn-to Affidavit.

It should be noted that on January 20, 2012 and January 21, 2012, after Ms. Hammer had already been terminated, and after Ms. Hammer submitted the Original Hammer Release, Mr. Naylor demanded that Ms. Hammer sign a release that specifically had the "unconditional" language "I release all claims against the City of Sun Valley" or Sun Valley would not pay Ms.

Hammer the “severance”⁶ (Donoval Rehearing Aff., Para. 19, Exhibit 8). Mr. Naylor then sent the Proposed Sun Valley Release with the “unconditional” language of “I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City Of Sun Valley” included, and again demanded that if the Proposed Sun Valley Release was not signed and returned “payment will not be able to be made.” (Donoval Rehearing Aff., Para. 20, Exhibit 9). Contrary to Mr. Naylor’s demands, Ms. Hammer did not sign the Proposed Sun Valley Release or a release that included language that she released “all claims” against Sun Valley and instead submitted the “conditional” Supplemental Hammer Release. Having demanded that Ms. Hammer sign an “unconditional” release of “all claims”, Ms. Hammer was certainly entitled to believe that when Sun Valley did pay the “severance” even though Ms. Hammer did not sign a release that actually stated that she had waived “all claims”, that Sun Valley had accepted that Ms. Hammer was preserving her non-wage claims, including claims under the IPPEA. By its own actions in paying the “severance” after Mr. Naylor had made clear that Sun Valley would only do so if Ms. Hammer submitted a release waiving “all claims”, and giving Ms. Hammer the impression that Sun Valley had given up on its efforts to require Ms. Hammer to explicitly release “all claims” before Sun Valley made the payments to Ms. Hammer by direct deposit, Sun Valley should be estopped from then claiming that Sun Valley still somehow believed that she had waived “all claims” anyway.

⁶ In the email from Mr. Naylor of January 20, 2012, in response to the submission of the Original Hammer Release, Mr. Naylor states “please revise your release agreement to replace the last paragraph with this language, in order for payment to be made (emphasis added) “I release all claims against the City of Sun Valley”. (Donoval Rehearing Aff., Para. 18, Exhibit 7) Then in the first email of January 21, 2012, Mr. Naylor states “Add that sentence to the release, or we will consider that she has complied with the agreement ... But you hold the “\$\$\$” in your hands.” (Donoval Rehearing Aff., Para. 19, Exhibit 8). Then in the second email of January 21, 2012, Mr. Naylor sent the Proposed Sun Valley Release with the language “I release all claims for damages of any kind arising from a termination without cause on January 19, 2012, and all claims against the City Of Sun Valley.” and demanded that the Proposed Sun Valley Release was “the acceptable release. If it is not received by 1:00 pm Monday, payment will not be able to be made.” (Donoval Rehearing Aff., Para. 20, Exhibit 9)

As there are considerable facts related to Ms. Hammer's denial that she waived any non-wage claims, which challenge Sun Valley's unverified assertions and arguments that Sun Valley officials somehow believed that Ms. Hammer had voluntarily waived her right to pursue any non-wage claims when Sun Valley unilaterally deposited the "severance" into Ms. Hammer's bank account after Mr. Naylor demanded that Sun Valley would only do so upon the receipt of a release which specifically stated that she had waived "all claims", which was never provided, and Sun Valley officials have been silent as to any of these matters, the Court's entry of summary judgment is in error, and should be reversed.

IV) SUN VALLEY HAS FAILED TO COUNTER THAT THE U.S. SUPREME COURT, THE U.S. DISTRICT COURT FOR IDAHO AND THE IDAHO SUPREME COURT HAVE ALL DEFINED "SEVERANCE" AS WAGES OR AS REMUNERATION FOR WORK PERFORMED, NOT AS SETTLEMENT OF OTHER CLAIMS OR AS LIQUIDATED DAMAGES

In her Memorandum in Support Of Reconsideration, Ms. Hammer provided cases from the U.S. Supreme Court, the U.S. District Court for Idaho and the Idaho Supreme Court, all of which define that when an employee is paid a "severance" payment, the payment relates to past services performed, and is not liquidated damages or settlement of other non-wage related claims, as was argued by Sun Valley, and as was found by the Court in its Summary Judgment Decision.

The most important case law cite, and one which the Court is mandated by *stare decisis* to accept, is that in the 2014 case of *U.S. v. Quality Stores*, 134 S.Ct. 1395 (U.S. Sup.Ct. 2014), the U.S. Supreme Court stated (@1399-1400):

"Severance payments made to terminated employees are 'remuneration for employment'. Severance payments are, of course, 'remuneration', and common sense dictates that employees receive the payments 'for employment' ... Severance payments are made in consideration for employment – for a 'service ... performed' by 'an employee for the person employing him.' "

In its Response, Sun Valley has failed to respond to, and has instead chosen to simply ignore, the U.S. Supreme Court's recent definition in *U.S. v. Quality Stores* that "severance" is for "services performed", not for liquidated damages.

In her Memorandum in Support Of Reconsideration Ms. Hammer also cited to two Idaho Supreme Court cases (*Johnson v. Allied Stores Corp.*, 106 Idaho 363, 679 P.2d 640 (Idaho Sup.Ct. 1984)) and *Parker v. Underwriters Laboratories*, 140 Idaho 517, 96 P.3d 618 (Idaho Sup.Ct. 2004) and a U.S. District Court For Idaho case (*Sarbacher v. Americold Realty*, 2011 WL 5520442 (U.S. Idaho 2011)), all of which discuss the parameters of what "severance" means in the context of an employment settlement under Idaho law. In *Johnson v. Allied Stores*, in determining whether "severance" pay was "wages" under *Idaho Statute 45-608* (related to the statute of limitation on collection of wages law suits), the Idaho Supreme Court stated that "Severance pay is also a component of compensation in an employment agreement ... Thus we hold that a claim for severance pay also comes within the parameters of *Idaho Statute 45-608*." (i.e. Re: Collection Of Wages) (i.e. wages for services rendered). In *Parker v. Underwriters*, in citing a Colorado case of *Moore v. Digital Equipment*, 868 P.2d 1170, 1172 (Colo. App.Ct. 1994) (which stated that "A severance allowance is a payment made to an employee in return *for services previously provided*. (emphasis added))" the Idaho Supreme Court stated:

" 'Severance pay' has been defined as 'a sum of money usually based on length of employment for which an employee is eligible upon termination.' (citing to the *American Heritage Dictionary Of the English Language*, 4th Edition, 2000). The purpose of a severance plan is to protect employees from economic hardship and *to reward them for past services rendered*. (emphasis added)" (citing to 27 Am.Jur.2d, *Employment Relationships*, Sec. 70) (@ 520)

And in *Sarbacher*, the U.S. District Court for Idaho differentiated findings in an Idaho case named *Moore v. Omnicare*, 141 Idaho 809, 118 P.3d 141 (Idaho Sup.Ct. 2005) that

prospective payments in settlement of a termination were considered liquidated damages, not wages, to the facts in the *Sarbacher* case. In *Sarbacher*, the U.S. District Court differentiated the *Sarbacher* facts from the *Moore v. Omnicare* case because a) in *Sarbacher* the payment to the plaintiff was a lump sum payment (not prospective payments as was the case in *Moore v. Omnicare*), and b) the separation agreement entered into in *Sarbacher* specifically included the phrase “severance” while the word “severance” was never mentioned in the agreements entered into in *Moore v. Omnicare*⁷.

As was the case in *Sarbacher*, in this case, the Severance Clause of the Employment Agreement and the Supplemental Hammer Release both referred to the payments that Ms. Hammer was to receive as being “severance”, and Ms. Hammer received the “severance” in a lump sum payment. However, in entering summary judgment, the Court specifically dismissed the findings of Judge Winmill in the *Sarbacher* case, and instead determined that the “severance” payments to Ms. Hammer were “liquidated damages” pursuant to the rationale of *Moore v. Omnicare*. Judge Winmill has been a U.S. District Judge for approximately twenty (20) years and has heard hundreds of employment related cases under Idaho law. Judge Winmill’s logic and analysis of the definition of “severance” under Idaho law should not be held with such little disregard by this Court. Under Judge Winmill’s analysis in *Sarbacher*, if payment is made to a terminated employee in a lump sum and if the phrase “severance” is used in connection with the payment, under Idaho law, the payment relates to remuneration for services rendered and is not to be considered “liquidated damages”, as was the case in *Sarbacher*. Therefore, this Court should follow the extensive experience of Judge Winmill in regards to Idaho employment law

⁷ In fact, as noted in Ms. Hammer Memorandum in Support Of Reconsideration, in *Sarbacher*, Judge Winmill specifically found that because the settlement agreement in *Sarbacher* used the phrase “severance”, the payments made to the plaintiff in that case could not be considered “liquidated damages”, as was found in *Moore v. Omnicare*, where the phrase “severance” was never mentioned in settlement documents.

matters, and follow the guidance of *Sarbacher* (as opposed to *Moore v. Omnicare*), and find that the payments made to Ms. Hammer were strictly “severance” for wages and not liquidated damages as the Court found.

In its Response, Sun Valley also now asserts that the two Idaho cases Ms. Hammer mentioned in her Memorandum in Support Of Reconsideration, which Sun Valley did not itself previously rely on, namely, *Parker v. Underwriters* and *Moore v. Digital*, confirm that “severance” is not wages or remuneration for past services. However, like in *Moore v. Omnicare*, the facts in both *Parker v. Underwriters* and *Moore v. Digital* are much different than Ms. Hammer’s situation. In both *Parker v. Underwriters* and *Moore v. Digital*, (as was the case in *Moore v. Omnicare*), the plaintiffs received post termination payments which were considered “enhanced” benefits (see *Parker v. Underwriters* @622), which Ms. Hammer did not receive in this situation. Sun Valley’s arguments regarding both *Parker v. Underwriters* and *Moore v. Digital* are not applicable as Ms. Hammer did not receive any post-termination or “enhanced” benefits, but instead received a lump sum “severance” payment.

However, no matter what the status was of previous Idaho rulings related to what is and what is not “severance”, or what the definition of “severance” is, all courts, whether it be the Idaho Supreme Court, the U.S. District Court for Idaho or this Court, are now bound by the explicit findings of the U.S. Supreme Court in *U.S. v. Quality Stores*, that “severance” payments are “consideration for employment – for a ‘service ... performed’ by ‘an employee for the person employing him.’”, and not liquidated damages or settlement of non-wage claims, as was found by the Court in the Summary Judgment Decision. All cases entered prior to the 2014 findings in *U.S. v. Quality Stores* regarding what is and what is not “severance” must now be viewed in light of the recent findings of the U.S. Supreme Court in *U.S. v. Quality Stores*. Any arguments of any

litigant, including Sun Valley, that “severance” is anything but payment for a “service performed”, faces serious scrutiny and skepticism subsequent to the U.S. Supreme Court’s finding in *U.S. v. Quality Stores*.

Pursuant to the concept of *stare decisis*, this Court is obligated to respect and comply with the rulings of higher courts, and in particular the U.S. Supreme Court. In light of the recent findings of the U.S. Supreme Court in *U.S. v. Quality Stores*, and the Court’s findings that the “severance” payment to Ms. Hammer was not wages for a “service performed”, but instead was liquidated damages, the Court must reconsider its findings in light of its obligations related to the U.S Supreme Court’s definition of “severance” in *U.S. v. Quality Stores* as being payment for past services rendered or performed (as has been argued by Ms. Hammer), and not as “liquidated damages” or as settlement of non-wage claims (as has been argued by Sun Valley and found by the Court).

V) FOR SUMMARY JUDGMENT PURPOSES, THE COURT ERRED BY REJECTING MS. HAMMER’S AND FORMER MAYOR WILICH’S SWORN STATEMENTS THAT NEITHER INTENDED THAT MS. HAMMER WAS PROSPECTIVELY REQUIRED TO WAIVE ANY NON-WAGE RELATED CLAIMS WHEN THE EMPLOYMENT AGREEMENT WAS ENTERED INTO IN 2008

In support of her Objection to the entry of summary judgment, and in support of her Memorandum in Support Of Reconsideration, Ms. Hammer has submitted Affidavits of herself, Mr. Donoval and Former Mayor Willich regarding the intent of the parties when the Employment Agreement was entered into back in 2008. The Court is obligated to accept the Affidavits as being true for summary judgment purposes (see *Sutton v. Brown* @109).

Ms. Hammer, Mr. Donoval (who acted as Ms. Hammer’s counsel regarding the Employment Agreement) and Former Mayor Willich have all sworn that in reviewing the Employment Agreement drafted by Sun Valley City Attorney Rand Peebles in 2008, that they all

accepted the common definition of “severance” as relating only to remuneration for past services rendered, and that none of the three considered that by entering into the Employment Agreement that should Ms. Hammer ever be terminated “without cause” that she would be waiving any non-wage claims (see Hammer Rehearing Aff., Para. 9-12; Donoval Rehearing Aff., Para. 8-9; Willich Rehearing Aff., Para. 5-9).

Ms. Hammer’s basis for her belief that “severance” only applied to past service should she ever be terminated, was based on her history as a municipal attorney and as a city administrator in Illinois , where statutes provide that “severance” only applies to “past services rendered to an employer” (Hammer Rehearing Aff., Para. 8).

Mr. Donoval’s basis for believing that “severance” only applied to past services should Ms. Hammer ever be terminated, was based on his work as both an attorney and a CPA wherein he was aware that for income and employment tax purposes “severance” is defined by the IRS as wages, not as liquidated or other non-wage related payments. (Donoval Rehearing Aff., Para. 7)

Former Mayor Willich based his belief that “severance” only applied to past services rendered should Ms. Hammer ever be terminated, due to his work as a high level executive at Boeing wherein “severance” payments were “limited to performance related compensation”. (Willich Rehearing Aff., Para. 10)

Both Ms. Hammer and Former Mayor Willich have confirmed that the specifics regarding whether “severance” did not apply to any non-wage related claims should Ms. Hammer ever be terminated were not specifically discussed when the Employment Agreement was entered into in 2008 because both believed that it was obvious that “severance” clearly meant that any compensation under the Severance Clause of the Employment Agreement was intended to compensate Ms. Hammer “for past services rendered”, not for settlement of other

non-wage related claims. (Hammer Rehearing Aff., Para. 9-10; Willich Rehearing Aff., Para. 5-6) Both Ms. Hammer and Former Mayor Willich have sworn that if there was any question that the phrase “severance” in the Severance Clause of the Employment Agreement only was considered as payment for past services rendered, and not for settlement of any future claims, that both would have agreed to add specific language in the Employment Agreement defining such, because that was what was intended by both Former Mayor Willich and Ms. Hammer (Hammer Rehearing Aff., Para. 11; Willich Rehearing Aff., Para. 7).

Separate from the intent of Former Mayor Willich and Ms. Hammer related to the Severance Clause, the Court must look to the language of the singular sentence in the Severance Clause which requires that Ms. Hammer must provide Sun Valley with an undefined release of all claims, within the context of a section of the Employment Agreement which uses the phrase “severance” no less than five (5) separate times. Certainly, because the provision requiring a release was in a section that described that it related to “severance” in numerous places, and that the phrase “liquidated damages” is found nowhere in the Severance Clause, both Ms. Hammer and Former Mayor Willich had the right to consider that the providing of a release would only relate to the release of wage related claims for services rendered, as opposed to the release of any tort, injury, constitutional or other non-wage related claims at the time the Employment Agreement was entered into.

It is simply ludicrous for Sun Valley to assert that Ms. Hammer had somehow knowingly prospectively released “any and all” potential claims against Sun Valley, even claims that could not have been foreseen, when she signed the Employment Agreement⁸. Under Sun Valley’s

⁸ Mr. Donoval made this patently clear to Mr. Naylor in his January 18, 2012 email when he stated “*Nor is it rational to assert that Ms. Hammer would have waived any non-contract damage claims she would have prospectively been entitled to (i.e. personal injury claims) when she signed the agreement.*” (Donoval Rehearing Aff., Para. 15, Exhibit 5)

arguments, and the Court's findings, did Ms. Hammer prospectively waive any horrific injuries she may have encountered if she was hurt as part of her duties as a Sun Valley fire fighter? Under Sun Valley's arguments, and the Court's findings, did Ms. Hammer prospectively waive any injuries Ms. Hammer may have suffered if Former Council Member Ribí had hit her over the head with a baseball bat rather than only assaulting her? Under Sun Valley's arguments, and the Court's findings, if Sun Valley was facing potential multi-million dollar claims from Ms. Hammer, Sun Valley apparently could terminate Ms. Hammer "without cause" and limit its exposure to only \$65,000 (i.e. 6 months of Ms. Hammer's pay). That could not possibly have been the intent or purpose of the Severance Clause of the Employment Agreement when it was entered into in 2008.

On Page 5 and 6 of the Summary Judgment Decision, the Court asserts that where parties disagree over the intent of a contract provision, that "where one party has no reason to know of any other meaning than that apparent from the other party's own words, and the other party did not did have reason to know the meaning the first party would attach to his words, the first party's understanding prevails." However, in entering the Summary Judgment Decision, the Court wholly ignores Idaho case law directives that intent of the parties must be looked at "***at the time the contract was made***" (see *Opportunity, LLC v. Ossewarde*, 136 Idaho 602, 38 P.3d 1258 (Idaho Sup.Ct. 2002)). The Court has made the error of using the interpretation of the new administration of Sun Valley as to what the Severance Clause of the Employment Agreement means, rather than the intent of the former administration of Sun Valley in the form of Former Mayor Willich, who negotiated and entered into the Employment Agreement on behalf of Sun Valley. In essence, the view of the new administration of Sun Valley should be irrelevant to the analysis.

Taking the sworn-to statements of Former Mayor Willich as being true, which the Court must do for summary judgment purposes (see *Sutton v. Brown* @109), the Court must acknowledge that *at the time the Employment Agreement was entered into* that Sun Valley, as an entity, interpreted the Severance Clause of the Employment Agreement in the exact same way as Ms. Hammer, namely, that the receipt of “severance” should Ms. Hammer ever be terminated did not require her to release any non-wage claims. As there is no disagreement between the parties who actually entered into the Employment Agreement as to what the language of the Severance Clause of the Employment Agreement was meant to provide for when the Employment Agreement was entered into, and therefore still must provide for, there simply and actually is no disagreement over the intent of the parties who actually entered into the Employment Agreement.

As the two parties who entered into the Employment Agreement, namely Ms. Hammer and Former Mayor Willich, had a meeting of the minds as to what the Severance Clause of the Employment Agreement meant, the new administration of Sun Valley, and the Court itself, has no authority to change that intent. The Court’s finding that a corporate owner or a new administration of a government entity can change the intent of a contract, notwithstanding both the prior owner’s or administration’s sworn-to statements as to what the intent of the parties were when entering into a contract, violates every tenet of the sanctity of contracts. As the Court must accept as true, for summary judgment purposes, that both Ms. Hammer and Former Mayor Willich were both clear when the Employment Agreement was entered into in 2008 that the Severance Clause of the Employment Agreement did not require that Ms. Hammer waive any non-wage claims should she be paid the “severance” payments if she was terminated “without cause”, and as the Court must resolve all doubts regarding what the intent of the parties were

when the Employment Agreement was entered into in favor of Ms. Hammer, not Sun Valley (see *Crane v. Banner* @73-74), the Court must reverse its findings that the Severance Clause of the Employment Agreement required that Ms. Hammer waive any non-wage claims when she was paid the “severance” .

V) SUN VALLEY HAS FAILED TO RESPOND TO, OR DENY, THAT BY REQUIRING EMPLOYMENT TAX WITHHOLDINGS ON ALL OF THE “SEVERANCE” PAYMENTS, THAT SUN VALLEY ACKNOWLEDGED THAT NONE OF THE “SEVERANCE” PAYMENTS WERE FOR NON-WAGE CLAIMS OR FOR LIQUIDATED DAMAGES

Ms. Hammer’s assertions about Former Treasurer Frostenson’s admission that all “severance” Ms. Hammer was about to receive was subject to employment taxes, is not an insignificant issue in the matter. Sun Valley has failed to respond in any way to the assertion that by withholding employment taxes on the entire amount of “severance”, that Sun Valley was admitting that none of the “severance” payments related to liquidated damages or other non-wage claims, which would have been exempt from employment taxes - or that at a minimum, Sun Valley lead Mr. Donoval and Ms. Hammer to believe that by withholding employment taxes on the entire “severance” payments that Sun Valley had conceded that Ms. Hammer was not being paid any of the “severance” in release of any non-wage claims.

Pursuant to IRS *Revenue Ruling 72-268*, liquidated damages are not “wages” subject to employment taxes (also see *Kern v. Mid-Continental Petroleum Corp.*, 63 F.Supp. 120 (U.S. N.D.Iowa 1945, affirmed by the U.S. 8th Circuit Appellate Court (157 F.2d 310 (U.S. App.8th 1946) (liquidated damages are not “wages” for employment tax withholding purposes). In fact, the entire *U.S. v. Quality Stores* case previously cited, deals with the issues related to whether “severance” payments are subject to employment tax withholding or are exempt from

withholding of employment taxes (which the U.S. Supreme Court affirmed they were not exempt) as some other forms of compensation (such as liquidated damages) are.

Most competent attorneys, CPA's and financial professionals are well aware of this employment tax provision. Certainly, Mr. Donoval was aware of this employment tax withholding provision when he discussed the issue regarding withholdings on the "severance" payment about to be paid to Ms. Hammer with Former Treasurer Frostenson on January 23, 2012 (see Donoval Rehearing Aff., Para. 30-34). Mr. Donoval also had the right to presume that Former Treasurer Frostenson was aware of the implications of whether the "severance" payments about to be paid to Ms. Hammer were wages subject to withholding, or liquidated damages or other non-wage related payments not subject to withholding. Instead, Former Treasurer Frostenson made clear to Mr. Donoval that the entire amount of "severance" was wages subject to employment tax withholding, and not liquidated damages or other non-wage related compensation which would not be subject to employment tax withholding⁹. Considering that Mr. Donoval had just submitted several correspondences to Mr. Naylor confirming that Ms. Hammer was not going to waive any non-wage claims as part of issuing a release, that Ms. Hammer and Mr. Donoval had just rejected signing the "unconditional" Proposed Sun Valley Release Mr. Naylor was demanding that Ms. Hammer sign in return for the payment, and that Former Treasurer Frostenson had just confirmed that none of the "severance" payments related to liquidated damages or non-wage claims - both Ms. Hammer and Mr. Donoval had the right to believe that they had preserved Ms. Hammer's rights to bring further non-wage claims, such as the IPPEA claim, even if Sun Valley paid Ms. Hammer the "severance".

⁹ Pursuant to Mr. Donoval's Affidavit, on January 23, 2014 "Former Treasurer Frostenson agreed with me that all of the "severance" payments that Ms. Hammer was to receive pursuant to the Severance Clause of the Employment Agreement and listed in the Severance Pay Voucher were "wages" subject to employment and income tax withholdings, and not "liquidated damages" or other damages." Donoval Rehearing Aff., Para. 32)

For summary judgment purposes, the Court must accept as true (see *Sutton v. Brown* @109) the statements of Former Treasurer Frostenson on January 23, 2012 that all of the “severance” payments to be made to Ms. Hammer were wages and that none of the “severance” payments were considered by Sun Valley at the time they were paid to be either liquidated damages or in regards to the settlement of other non-wage claims. (Donoval Rehearing Aff., Para. 32) The fact that Sun Valley withheld employment taxes on the entire “severance” payments made to Ms. Hammer is additional evidence that at the time of the direct deposit of the “severance” funds into Ms. Hammer’s bank account, that Sun Valley officials did not consider any of the “severance” payments to Ms. Hammer to be liquidated damages or payment for other non-wage matters, in direct contradiction to what Sun Valley has subsequently argued and the Court has determined.

As there is evidence in the record in the form of Former Treasurer Frostenson’s uncontroverted admission that none of the “severance” being paid to Ms. Hammer was liquidated or other damages, and Sun Valley’s withholding of employment taxes on the entire “severance” payments made to Ms. Hammer (evidencing that Sun Valley did not consider any of the “severance” to be liquidated damages at the time of payment), which directly contradicts Sun Valley’s claims and the Court’s findings, there are genuine issues of material fact as to whether Sun Valley really did consider that the “severance” payment to Ms. Hammer included settlement of non-wage claims, which prohibits the entry of summary judgment.

VI) THE COURT’S FINDING THAT MS. HAMMER WAIVED HER RIGHT TO BRING THE IPPEA CLAIMS BECAUSE SHE WAS PAID THE “SEVERANCE” BY DIRECT DEPOSIT, AND DID NOT RETURN THE PAYMENT BEFORE BRINGING SUIT, IS ERROR

In the Summary Judgment Decision, based on arguments of Sun Valley, the Court found that Ms. Hammer had the choice of rejecting the “severance” payment and pursuing her non-

wage claims or accepting the “severance” payment and waiving all claims, including any non-wage related claims. Ms. Hammer has asserted that she actually had a third option, which was to refuse to sign a waiver that included any language that she was waiving any non-wage claims and still demand that her wage related “severance” be paid (Hammer Rehearing Aff., Para. 19; Donoval Rehearing Aff., Para. 23).

The Court made its findings, apparently, misunderstanding that Ms. Hammer did not voluntarily receive a check from Sun Valley and cash it in settlement of “all” claims – but instead that the “severance” payment was made by Sun Valley by direct deposit into Ms. Hammer’s checking account, without any indication from Sun Valley that by doing so Sun Valley considered that Ms. Hammer had waived any and all claims, as it later asserted.

Although no Idaho cases can be found regarding whether a payment made by an employer must be returned if the plaintiff thereafter seeks to challenge the legitimacy of a waiver, several federal cases have discussed the issue. In *Richardson v. Sugg*, 448 F.3d 1046 (U.S. App.8th 2006), the U.S. 8th Circuit Appellate Court found that former University Of Arkansas basketball coach Nolan Rishardson was not required to return approximately a half million dollar payment he was paid pursuant to the termination provision of his contract, when he thereafter brought a federal discrimination law suit against the University of Arkansas.

Closer to home, the U.S. 9th Circuit Appellate Court, in *Botefur v. City Of Eagle Point*, 7 F.3d 152 (U.S. App.8th 1993), found that requiring a plaintiff to return the termination payments made to an employee who signed a release, as a prerequisite to filing a law suit related to the termination, was not necessary. The *Botefur* Court found that “A tender back requirement is neither “indispensible to any scheme of justice” nor an “indispensible prerequisite to litigation.” (@ 156). The *Botefur* Court concluded that “We hold that a civil rights plaintiff is not required to

return consideration received pursuant to a valid release agreement as a prerequisite to initiating a Section 1983 action premised on the violations purportedly released by the agreement.” (@ 156).

In this case, Ms. Hammer did not voluntarily receive and cash a check from Sun Valley in settlement of any claims. Instead, Sun Valley unilaterally chose to direct the deposit the “severance” payments into her bank account, when Ms. Hammer had been clear in her communications that she was not releasing any non-wage claims, or at a minimum, that the issue had still not been resolved. Based on the cases cited above, the Court should not have taken into consideration that because Sun Valley paid Ms. Hammer the “severance” by direct deposit it somehow was evidence that she had waived “all” claims, or required that she was required to return any of the “severance” funds received before she brought suit.

VII) THE COURT’S FINDINGS THAT JUDICIAL ESTOPPEL APPLIES CANNOT STAND CONSIDERING THAT ALLEGING THAT SUN VALLEY TERMINATED MS. HAMMER FOR REASONS OTHER THAN “WITHOUT CAUSE” OR “AT WILL” IS A PLEADING REQUIREMENT FOR A PRETEXT OR RETALIATION CLAIM

In its Summary Judgment Order, the Court found that Ms. Hammer was judicially estopped from bringing her IPPEA claims because she asserted that she was terminated “without cause” and at the same time she asserted that she was really terminated “with cause”¹⁰. Sun Valley has responded that the findings of the Court related to judicial estoppel should stand.

The Severance Clause of the Employment Agreement describes that if Ms. Hammer was terminated “without cause” she would be entitled to a six month “severance” payment. The Employment Agreement also describes that if Ms. Hammer was instead terminated “with cause”

¹⁰ The definition in the Employment Agreement related to Ms. Hammer being terminated “without cause” is akin to an Idaho employee being terminated “at will”.

she would be entitled to a hearing to defend herself against the claims which resulted in a “with cause” termination.

Whether it was based on her contract terms, or whether it was based on Idaho case law, Ms. Hammer was entitled to a name clearing hearing if she was not terminated “at will”/“without cause”, but was actually terminated for a reason. Multiple Idaho cases confirm that an “at will” employee has a right to bring a cause of action if the employer terminated the employee “at will” as a pretext for terminating the employee for some other reason. In order to bring a “pretext” cause of action, by necessity, the employee must allege that the employer terminated the employee “at will” as a pretext for the other real reasons that the employee was terminated, entitling the employee to a name clearing hearing. (see *Hatheway v. University Of Idaho*, 155 Idaho 255, 310 P.3d 315 @327 (Idaho Sup.Ct. 2013); *Cantwell v. Boise*, 146 Idaho 127 @136, 191 P.3d 205 (Idaho Sup.Ct. 2008)) That is exactly what Ms. Hammer has done, namely, in various pleadings in this case as well as other matters, she has alleged that she was terminated “at will” (i.e. “without cause”) as a pretext, when in reality Sun Valley terminated her for the numerous erroneous public claims made by Sun Valley officials that she had committed all kinds of egregious acts. As it is a pleading requirement to bring a pretext cause of action against Sun Valley to assert that Sun Valley claimed Ms. Hammer was terminated “at will”/ “without cause” when Sun Valley actually terminated Ms. Hammer for other publicly enumerated reasons without providing her with a name clearing hearing, the Court was in error for ruling that Ms. Hammer was judicially estopped from raising that allegation.

As is the case with a pretext claim, by bringing a claim under the IPPEA, a plaintiff, by necessity, must assert that the public employer did not terminate the employee “at will” or for other reasons, but instead terminated the employee in retaliation for complaints the employee

made about the public employer or its officials, as Ms. Hammer has done herein. In both *Curlee v. Kootenai County Fire & Rescue*, 148 Idaho 391, 224 P.3d 458 (Idaho Sup.Ct. 2008) and *Van v. Portneuf Medical Center*, 147 Idaho 552, 212 P.3d 982 (Idaho Sup.Ct. 2009) (also *Van v. Portneuf Medical Center*, 156 Idaho 696, 330 P.3d 1054 (Idaho Sup.Ct. 2014)) the Idaho Supreme Court made clear that the parameters of a case under the IPPEA, by necessity, requires that the employee was terminated not for the reasons described by the employer or “at will”, but instead for a retaliatory reason, namely, because of complaints made by the employee against the employer or its officials/employees¹¹. As is the case with a pretext claim, the Court was in error for ruling that Ms. Hammer was judicially estopped from claiming that she was terminated “at will”/“without cause”, when in reality Ms. Hammer was terminated in retaliation for bringing harassment, hostility and assault claims against Former Council Member Ribi, when that is a pleading requirement to bring any retaliation claim against Sun Valley under the IPPEA.

In *McCallister v. Dixon*, 154 Idaho 891, 303 P.3d 578 (Id. Sup.Ct. 2013) the Idaho Supreme Court acknowledged that judicial estoppel precludes a party from advantageously taking one position, then subsequently seeking a second position that is incompatible with the first (@894). In this case, Ms. Hammer’s allegations that Sun Valley terminated her “at will” under the “without cause” of the Employment Agreement, when in reality she was terminated either “with cause” under the Employment Agreement or generally “with cause” as an “at will” employee (entitling her to a name clearing hearing which was never provided), or that she was terminated in retaliation for making harassment complaints against Former Council Member Ribi (thus allowing for claims under the IPPEA), are not inconsistent with her position, **but are**

¹¹ In *Curlee v. Kootenai County Fire & Rescue* (@394), the employee was purportedly fired for “creating dissension”. In *Van v. Portneuf Medical Center* (@ 985), the employee was purportedly terminated for “his inability to maintain positive interpersonal relations with his colleagues.” In both cases the employees asserted that in reality they were terminated because of complaints they made about misconduct of co-workers or the company itself.

instead pleading requirements to bring a pretext case or a retaliation case under the IPPEA.

That being the case, the Court's findings that Ms. Hammer was judicially estopped from raising the same claims that are a pleading necessity for either a pretext case or a retaliation case under the IPPEA (i.e. claiming a termination "at will"/"without cause" when the employee was actually terminated "with cause" or for a reason) must be reversed.

VIII) SUMMARY

As was stated in Ms. Hammer's Memorandum in Support Of Reconsideration, in *Knipe Land Co. v. Robertson*, 151 Idaho 449, 458, 259 P.3d 595 (Idaho Sup.Ct. 2011), the Idaho Supreme Court clearly and succinctly stated in regards to whether someone had waived rights that they possessed that:

"A waiver is a voluntary, intentional relinquishment of a known right or advantage, and the party asserting the waiver must show that he acted in reasonable reliance upon it and that he thereby has altered his position to his detriment ... A clear intention to waive must be shown before waiver shall be established. Waiver will not be inferred except from a clear and unequivocal act manifesting an intent to waive, or from conduct amounting to estoppel."

Ms. Hammer asks the Court to also consider the language of the Missouri Court of Appeals in *Frisella v. RVB Corp.*, 979 S.W.2d 474 (Miss. App.Ct. 1998), where the Missouri Appellate Court reversed the entry of summary judgment related to an asserted waiver, when it stated:

"To rise to the level of a waiver, the conduct must be so manifestly consistent with and indicative of an intention to renounce a particular right or benefit that no other reasonable explanation of the conduct is possible."

In this case Ms. Hammer's and Former Mayor Willich's sworn-to intent was that Ms. Hammer was not required to waive any non-wage claims should Sun Valley ever terminate her without cause under the Severance Clause of the Employment Agreement. Based on both of their professional understanding of what "severance" was meant to be, both had the legitimate right to

assert that they understood “severance” meant wage claims related to services rendered only, not liquidated damages or other non-wage claims. The U.S. Supreme Court’s recent description of “severance” being for “services performed” and not as liquidated damages in *U.S. v. Quality Stores* justifies both Ms. Hammer’s and Former Mayor Willich’s position as to what “severance” meant in the Severance Clause of the Employment Agreement.

And, during the days surrounding the issuance of the “severance” to Ms. Hammer by Sun Valley by direct deposit, both Mr. Donoval and Ms. Hammer had the legitimate right to believe that they had retained the right to proceed on any non-wage claims notwithstanding that Sun Valley paid Ms. Hammer the “severance”, including, that a) Mr. Donoval sent at least four communications to Mr. Naylor confirming that Ms. Hammer was not waiving any non-wage claims even if Sun Valley paid the “severance”; b) Ms. Hammer refused to sign the “unconditional” Proposed Sun Valley Release that Mr. Naylor demanded be signed before the “severance” would be paid; c) Ms. Hammer refused to add the language of “I release all claims against Sun Valley” to the Supplemental Hammer Release as had been demanded by Mr. Naylor before Sun Valley would pay the “severance”, d) Former Treasurer Frostenson confirmed that none of the “severance” payments that were about to be paid to Ms. Hammer included any “liquidated damages” or settlement of other non-wage claims, and, e) Sun Valley withheld employment taxes on the entire “severance” even though employment taxes were not required to be withheld on “liquidated damages” or settlement of other non-wage related claims.

Contrary to Sun Valley’s assertions, Sun Valley had a choice - either pay Ms. Hammer the “severance” and admit that she was retaining several non-wage claims (including the IPPEA claims), or withhold payment and demand that Ms. Hammer actually provide the unconditional release with the language of “I release all claims against Sun Valley” included, which Ms.,

Hammer refused to provide. Having paid Ms. Hammer the “severance” without getting the unconditional release Sun Valley was seeking, Sun Valley cannot now claim that it somehow believed that Ms. Hammer had waived “any and all claims”.

Based on the Affidavits provided by Ms. Hammer, which the Court must accept as true for purposes of summary judgment (see *Sutton v. Brown* @109), Ms. Hammer certainly did not voluntarily and intentionally relinquish her right to proceed on non-wage claims she refused to sign the Proposed Sun Valley Release and instead submitted the Supplemental Hammer Release which did not include the language regarding the release of “all claims” that Mr. Naylor was demanding, as is required by *Knipe v. Robinson*. Ms. Hammer also certainly did not show a “clear intention” to waive any non-wage claims (see *Knipe v. Robinson*) by the submission of the Supplemental Hammer Release. In fact the opposite is true, namely that Ms. Hammer believes she showed a “clear intention” not to waive any non-wage claims based on the communications to Sun Valley by Mr. Donoval, her refusal to sign the Proposed Sun Valley Release, and her refusal to add the language that Mr. Naylor had demanded in the Supplemental Hammer Release. As Ms. Hammer’s conduct was not “manifestly consistent with and indicative of an intention to renounce” any rights Ms. Hammer had to proceed with any non-wage claims against Sun Valley even if the “severance” was paid (see *Frisella v. RVB Corp.*), it was error for the Court to have concluded, at summary judgment, that Ms. Hammer had waived any right to proceed on the IPEPA claims. At a minimum, there are genuine issues of material fact which prohibits the entry of summary judgment based on a waiver claim.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James R. Donoval", written over a horizontal line.

James R. Donoval

Associated Counsel For Ms. Hammer

Solely For Summary Judgment Reconsideration Purposes

PROOF OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served by facsimile to the above listed recipients on or before 5:00 p.m. on May 26, 2015.

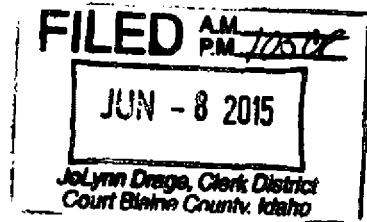
To: Kirtlan Naylor
Naylor & Hales
950 W. Bannock St., Suite 610
Boise, ID 83702

Wyatt Johnson
Angstman & Johansonz
3649 Lakeharbor Lane
Boise, ID 83703



James R. Donoval

James R. Donoval
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Caldwell, ID 83607
Ph: (312) 859-2029
Fax: (208) 649-1603
Idaho Atty No. 8142
jdonoval@aol.com



Associated Attorney for Plaintiff Sharon R. Hammer

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI;
and DeWAYNE BRISCOE,

Defendants.

Case No. CV-2012-479

**ORDER ON MOTION TO RECONSIDER
ENTRY OF SUMMARY JUDGMENT**

THIS MATTER having come before the Court on Plaintiff's Motion For Reconsideration Of Entry Of Summary Judgment:

IT IS ORDERED:

The Plaintiff's Motion For Reconsideration Of Entry Of Summary Judgment is DENIED.

ENTERED:


Hon Jon Brody

Date: 6/3/2015

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of June, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
4110 Eaton Ave., Suite D
Caldwell, ID 83607
Associated Attorney for Plaintiff

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X Email: jdonoval@aol.com

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Angstman & Johnson
3649 N. Lakeharbor Lane
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Attorney for Plaintiff

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X Email: wyatt@angstman.com

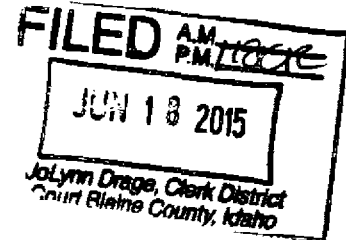
Kirtlan G. Naylor
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Attorneys for Defendant

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BLAINE COUNTY CLERK


Clerk/Deputy

James R. Donoval
 4110 Eaton Ave., Suite D
 Caldwell, ID 83607
 Ph: (312) 859-2029
 Fax: (208) 649-1603
 Idaho Atty No. 8142
 jdonoval@aol.com



Attorney for Appellant Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff-Appellant,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants- Respondents.

Case No. CV-2012-479

**PLAINTIFF'S FIRST REQUEST TO
 SUPPLEMENT THE RECORD ON
 APPEAL**

IDAHO SUP. CT. 43079

1. On February 25, 2015, Plaintiff filed her Notice Of Appeal, seeking appellate review of an Order of the Fifth District Court, Blaine County (the "District Court"), entering summary judgment against the Plaintiff in the matter, as well as in regards to several interlocutory orders entered by the District Court.

2. The Notice Of Appeal indicated that because a Motion For Reconsideration regarding the entry of summary judgment had been timely filed by the Plaintiff with the District Court, that the appeal of the matter herein was automatically stayed pursuant to I.A.R. 14(a), until such time as the District Court made findings related to the pending Motion For Reconsideration.

3. As part of the Notice Of Appeal, the Plaintiff requested that the standard record be prepared by the Clerk of the District Court.

4. On March 11, 2015, the Defendants filed their Request For Additional Transcripts And Record with the Clerk of the District Court, seeking that numerous filings with the District Court be included as part of the Record on Appeal. Plaintiff had no objection to the addition to the Record On Appeal of all of the filings that the Defendants sought be included in the Record On Appeal in their Request For Additional Transcripts And Record.

5. On March 12, 2015, the Notice Of Appeal was transmitted to the Supreme Court by the Clerk of the District Court, with the Supreme Court assigning Case No. 43079 to the matter herein.

6. On June 2, 2015, Plaintiff's counsel was served by the Clerk of the District Court with a seven (7) volume Record On Appeal.

7. Plaintiff's counsel has reviewed the Record On Appeal and, in addition to the pleadings related to the Motion For Reconsideration, has discovered several documents that have not been included as part of the Record On Appeal, which should be included in the Record On Appeal.

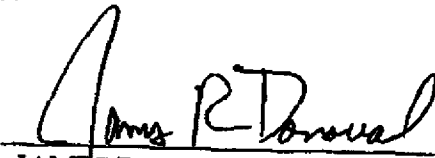
8. First, the Record On Appeal fails to include the January 17, 2014, Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel. Although the Defendants' Request For Additional Transcripts And Record did not included a specific request that the January 17, 2014 Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel be included in the Record On Appeal, all of the other pleadings related to the issue were included as part of the Record On Appeal, and the Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel is one of the rulings of the District Court that the Plaintiff has sought to appeal as part of the Notice Of Appeal, and thus should be included in the Record On Appeal. The Plaintiff requests that the Clerk of the District Court add the January 17, 2014 Memorandum Decision Denying Plaintiff's Motion To Enforce Subpoena And Compel to the Record On Appeal.

9. Second, the Defendants' Request For Additional Transcripts And Record sought that Exhibits "A" and "B" of the Affidavit Of Kirtlan Naylor In Opposition To Plaintiff's Motion To Compel, which were submitted to the District Court *in camera* on December 10, 2013, be included as part of the Record On Appeal. The Plaintiff agrees that these exhibits should be included as part of the Record On Appeal, for review by the Supreme Court in the matter, even if *in camera*. There is no evidence in the Record On Appeal that the documents provided to the District Court *in camera* on December 10, 2013 have been included as part of the Record On Appeal in any way. Plaintiff requests that the Clerk of the District Court prepare a separate volume of the Record On Appeal to be presented to the Supreme Court *in camera*, which includes Exhibits "A" and "B" of the Affidavit Of Kirtlan Naylor In Opposition To Plaintiff's Motion To Compel, which were submitted to the District Court *in camera* on December 10, 2013.

10. Third, the Defendants' Request For Additional Transcripts And Record sought that a Declaration of Kirtlan Naylor, which was submitted to the District Court *under seal* on November 18, 2014, be included as part of the Record On Appeal. The Plaintiff agrees that this declaration should be included as part of the Record On Appeal, for review by the Supreme Court in the matter. There is no evidence in the Record On Appeal that the Declaration of Kirtlan Naylor filed with the District Court *under seal* on November 18, 2014 has been included as part of the Record On Appeal in any way. Plaintiff requests that the Clerk of the District Court prepare a separate volume of the Record On Appeal to include the Declaration of Kirtlan Naylor which was filed *under seal* on November 18, 2014, and that such volume be filed *under seal* by the Clerk of the District Court with the Supreme Court.

DATED this 18th day of June, 2015.

By



JAMES R. DONOVAL
Attorney For Appellant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 19th day of June, 2015, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan Naylor
Naylor & Hales
950 W. Bannock St., Suite 610
Boise, ID 83702
Counsel for Respondent

☒ U.S. Mail
☒ Fax: (208) 383-9516
☐ Overnight Delivery
☐ Messenger Delivery
☐ Email:

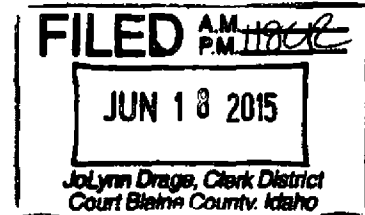
Wyatt Johnson
Angstman & Johnson
3649 N. Lakeharbor Lane
Boise, ID 83703
Counsel for Appellant

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☐ Messenger Delivery
☐ Email:



JAMES R. DONOVAL

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 Fax: (208) 649-1603
 Idaho Atty No. 8142
 jdonoval@aol.com



Attorney for Appellant Sharon R. Hammer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff-Appellant,

vs.

CITY OF SUN VALLEY; NILS RIBI;
 and DeWAYNE BRISCOE,

Defendants- Respondents.

Case No. CV-2012-479

**PLAINTIFF'S SECOND REQUEST
 TO SUPPLEMENT THE RECORD ON
 APPEAL**

IDAHO SUP. CT. 43079

1. On February 25, 2015, Plaintiff filed her Notice Of Appeal, seeking appellate review of an Order of the Fifth District Court, Blaine County (the "District Court"), entering summary judgment against the Plaintiff in the matter, as well as in regards to several interlocutory orders entered by the District Court.

2. The Notice Of Appeal indicated that because a Motion For Reconsideration regarding the entry of summary judgment had been timely filed by the Plaintiff with the District Court on January 30, 2015, that the appeal of the matter herein was automatically stayed pursuant to I.A.R. 14(a), until such time as the District Court made findings related to the pending Motion For Reconsideration.

3. As part of the Notice Of Appeal, the Plaintiff requested that the standard record be

prepared by the Clerk of the District Court.

4. On March 11, 2015, the Defendants filed their Request For Additional Transcripts And Record with the Clerk of the District Court, seeking that numerous filings with the District Court be included as part of the Record on Appeal. Plaintiff had no objection to the addition to the Record On Appeal of all of the filings that the Defendants sought be included in the Record On Appeal in their Request For Additional Transcripts And Record.

5. On March 12, 2015, the Notice Of Appeal was transmitted to the Supreme Court by the Clerk of the District Court, with the Supreme Court assigning Case No. 43079 to the matter herein.

6. On June 2, 2015, Plaintiff's counsel was served by the Clerk of the District Court with a seven (7) volume Record On Appeal.

7. Since the filing of the Motion For Reconsideration, the parties have filed various pleadings related to the Motion For Reconsideration and the District Court has held hearings on the matter.

8. On June 8, 2015, the District Court entered its Order On Motion To Reconsider Entry Of Summary Judgment denying the Plaintiff's request to reverse or revise the District Court's ruling entering summary judgment against the Plaintiff.


9. Plaintiff wishes to supplement the Record On Appeal with the various pleadings related to the Motion For Reconsideration.

10. The Plaintiff requests that the following filings with the District Court be added to the Record On Appeal:

a) The Associated Appearance Of Attorney James R. Donoval For Reconsideration Of Entry Of Summary Judgment Purposes Only filed on 1/30/15.

- b) Motion For Reconsideration Of Entry Of Summary Judgment filed on 1/30/15.
- c) Memorandum In Support Of Plaintiff's Motion For Reconsideration Of Entry Of Summary Judgment filed on 1/30/15.
- d) Facts In Support Of Motion For Reconsideration Of Entry Of Summary Judgment filed on 1/30/15.
- e) Affidavit Of Wayne Willich In Support Of Plaintiff's Motion For Reconsideration filed on 1/30/15.
- f) Affidavit Of Sharon R. Hammer In Support Of Plaintiff's Motion For Reconsideration filed on 1/30/15.
- g) Affidavit Of James R. Donoval In Support Of Plaintiff's Motion For Reconsideration filed on 1/30/15.
- h) Sun Valley's Objection To Plaintiff's Motion For Reconsideration Of Summary Judgment filed on 5/19/15.
- i) Reply Memorandum In Support Of Plaintiff's Motion For Reconsideration Of Entry Of Summary Judgment filed on 5/26/15.
- j) Order On Motion To Reconsider Entry Of Summary Judgment entered on 6/8/15.

DATED this 18th day of June, 2015.

By 
JAMES R. DONOVAL
Attorney For Appellant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 18th day of June, 2015, a true and correct copy of the foregoing document was served on the following individual(s) by the method indicated:

Kirtlan Naylor
Naylor & Hales
950 W. Bannock St., Suite 610
Boise, ID 83702
Counsel for Respondent

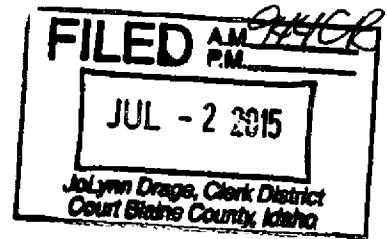
☒ U.S. Mail
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☐ Overnight Delivery
☐ Messenger Delivery
☐ Email:

Wyatt Johnson
Angstman & Johnson
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Boise, ID 83703
Counsel for Appellant

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☐ Overnight Delivery
☐ Messenger Delivery
☐ Email:



JAMES R. DONOVAL



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

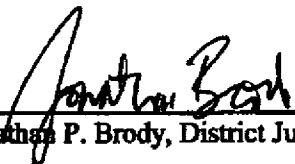
SUPPLEMENTAL JUDGMENT

JUDGMENT HEREBY IS ENTERED AS FOLLOWS:

The judgment entered on January 16, 2015, is supplemented to add the following sentence:

Defendant City of Sun Valley is awarded a judgment for costs in the total amount of
\$8,281.15 against Plaintiff Sharon R. Hammer.

DATED this 18th day of July, 2015.


Jonathan P. Brody, District Judge

SUPPLEMENTAL JUDGMENT - 1.

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2 day of July, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
4110 Eaton Ave., Ste. D
Caldwell, ID 83607
Attorneys for Plaintiff

___ U.S. Mail
___ Hand Delivered
___ Fax Transmission: 649-1603
X Email: jdonoval@aol.com

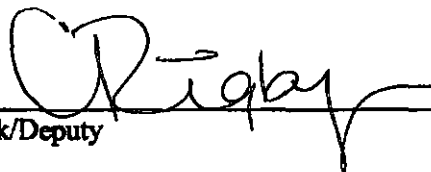
Wyatt Johnson
Angstman Johnson
3649 Lakeharbor Lane
Boise, ID 83703
Attorney for Plaintiff

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X Email: wyatt@angstman.com

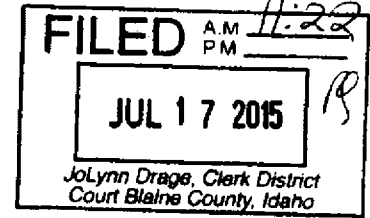
Kirtlan G. Naylor
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
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Attorneys for Defendant

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X Email: kirt@naylorhales.com;
tdw@naylorhales.com;
jake@naylorhales.com

BLAINE COUNTY CLERK


Clerk/Deputy

SUPPLEMENTAL JUDGMENT - 2.



Kirtlan G. Naylor [ISB No. 3569]
Jacob H. Naylor [ISB No. 8474]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
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Attorneys for Defendants City of Sun Valley,
Ribi, and Briscoe.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

Case No. CV-2012-479

**STIPULATION OF PARTIES FOR
INCLUSION OF ADDITIONAL
TRANSCRIPTS AND RECORD**

**TO: THE ABOVE-NAMED APPELLANT AND THE PARTY'S ATTORNEY, AND
THE COURT REPORTER AND CLERK OF THE ABOVE-ENTITLED COURT**

NOTICE IS HEREBY GIVEN, that the Plaintiff-Appellant and Defendant-Respondents, in the above-entitled proceeding hereby lodge their stipulation pursuant to I.A.R. 29(a) for the inclusion of the following additional material in the reporter's transcript or the clerk's record, already produced in this action.

**STIPULATION OF PARTIES FOR INCLUSION
OF ADDITIONAL TRANSCRIPTS AND RECORD - 1.**

The following documents were to be included as part of the standard record on appeal, but were inadvertently omitted, and should be included in the record¹:

- A. 1/17/2014 Memorandum Decision Denying Plaintiff's Motion to Enforce Subpoena and Compel
- B. 5/8/2014 Order Denying Permissive Appeal

The parties also stipulate to also has no objection to providing the Supreme Court with the *in camera* Exhibits "A" and "B" of the Affidavit of Kirtlan Naylor in Opposition to Plaintiff's Motion to Compel, submitted on December 10, 2013. However, Defendant-Respondent requires that any transmission of these documents by the Clerk of the District Court be only to the Supreme Court and be provided in a confidential manner such that their *in camera* status is maintained.

The parties stipulate to the addition of Plaintiff-Appellant's requested documents included in her Second Request to Supplement Record.

The parties also stipulate to the addition of the Judgment (filed January 16, 2015); Supplemental Judgment (filed July 2, 2015); and transcript of the following hearing into the reporter's transcript before the Supreme Court:

- A. Hearing date: June 2, 2015
Name of hearing: Hearing on Plaintiff's Motion for Reconsideration of Entry of Summary Judgment
Has a transcript been made? No
Name of reporter: Maureen Newton (208) 679-2534
Estimated number of pages: 1-100 pages

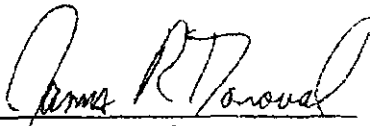
¹The parties recognize that the sealed exhibit of the November 18, 2014 Declaration of Kirtlan Naylor has already been provided to the Court, and was memorialized through certification by the Clerk of the District Court, (see Vol. VII, p. 1573), and thus re-production of this exhibit is unnecessary.

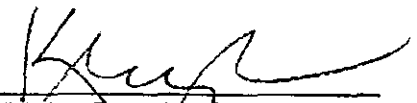
**STIPULATION OF PARTIES FOR INCLUSION
OF ADDITIONAL TRANSCRIPTS AND RECORD - 2.**

As the parties stipulate to these additions, and as provided in I.A.R. 29(a), this Court may make an order regarding these additions without requiring a hearing.

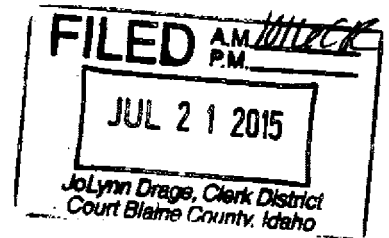
DATED this 9th day of July, 2015.

NAYLOR & HALES, P.C.

By 
James R. Donoval
Attorney for Plaintiff-Appellant

By 
Kirtlan G. Naylor, Of the Firm
Attorneys for Defendant-Respondents

**STIPULATION OF PARTIES FOR INCLUSION
OF ADDITIONAL TRANSCRIPTS AND RECORD - 3.**



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

SHARON R. HAMMER,

Plaintiff,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWayne BRISCOE,

Defendants.

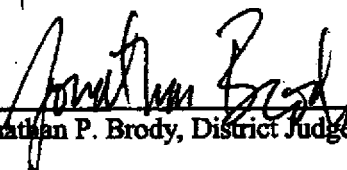
Case No. CV-2012-479

ORDER

The Stipulation of Parties for Inclusion of Additional Transcripts and Record having
come before this Court, and good cause appearing therefor;

IT IS HEREBY ORDERED that the parties' Stipulation of Parties for Inclusion of
Additional Transcripts and Record is ADOPTED in full.

DATED this 20th day of July, 2015.


Jonathan P. Brody, District Judge

ORDER - 1.

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of July, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

James R. Donoval
4110 Eaton Ave., Ste. D
Caldwell, ID 83607
Attorneys for Plaintiff

☐ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 649-1603
☒ Email: jdonoval@aol.com


Wyatt Johnson
Angstman Johnson
3649 Lakeharbor Lane
Boise, ID 83703
Attorney for Plaintiff

☐ U.S. Mail
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☐ Fax Transmission: 853-0117
☒ Email: wyatt@angstman.com

Kirtlan G. Naylor
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Ste. 610
Boise, Idaho 83702
Attorneys for Defendant

☐ U.S. Mail
☐ Hand Delivered
☐ Fax Transmission: 383-9516
☒ Email: kirt@naylorhales.com;
tdw@naylorhales.com;
jake@naylorhales.com

BLAINE COUNTY CLERK


Clerk/Deputy

ORDER - 2.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

SHARON R. HAMMER,

Plaintiff /Appellant,

vs.

CITY OF SUN VALLEY; NILS RIBI; and
DeWAYNE BRISCOE,

Defendants/Respondents.

)
) Supreme Court No. 43079
)
)
)
)
)
)
)
)
)
)
)

CLERK'S CERTIFICATE

STATE OF IDAHO)

County of Blaine)

)
) ss.
)

I, Crystal Rigby, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the above and foregoing Supplemental Clerk's Record on Appeal was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules as well as those requested by the Appellant.

I do further certify that all, if any, exhibits offered or admitted in the above-entitled cause and exhibits requested by the Appellant will be duly lodged with the Clerk of the Supreme Court along with the Supplemental Clerk's Record on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Hailey, Idaho, this 24 day of Sept., 2015.

JoLynn Drage, Clerk of the Court

By CRigby
Crystal Rigby, Deputy Clerk



CLERK'S CERTIFICATE - 1

239